United States Court of Appeals

for the Second Circuit

APPENDIX

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75-7374

United States Court of Appeals

FOR THE SECOND CIRCUIT

MATTHEW J. LAWLOR,

Plaintiff-Appellee,

—against—

THE GALLAGHER PRESIDENTS' REPORT, INC., and CYNTHIA A. BILLINGS,

Defendants-Appellants,

—and—

GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

JOINT APPENDIX

(Pages 1A—146A)

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Attorneys for Defendants-Appellants
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MATTHEW J. LAWLOR, :

Plaintiff, :

-against- :

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS, : Civil Docket 73 Civ. 5443-LFM

Defendants. :

- -x

DATE	PROCEEDINGS
12-21-73	Filed complaint & issued summons.
	* * * * *
3-29-74	Filed ANSWER of defts. Gallagher Pres. Report, Inc. & Cynthia A. Billings.
	* * * * *
4-3-74	Filed ANSWER & counterclaims of defts. Gulf & Western Indus., Judelson & Davis
	* * * * *
5-10-74	Filed pltfs. ANSWER to counterclaims.
	* * * * *
10-22-74	Non jury trial begun.
10-23-74	Trial c[illegible]'d.
10-24-74	Trial cont'd & concluded. Judge's decision reserved.

DATE	PROCEEDINGS
5-13-75	Filed Opinion #42406 & Order. Pltff brings this diversity action for libel alleging three claims for relief. For the many reasons indicated in the opinion, which constitutes this court's findings of fact & conclusions of law, judgment is granted. (1) In favor of defts Judelson & G&W against pltff dismissing the first claim for relief. (2) In favor of defts Davis & G&W against pltff dismissing the second claim for relief. (3) In favor of pltff against Report & Billings on the third claim for relief, in the amount of $45,000. (4) In favor of deft David against pltff dismissing the third claim for relief. (5) In favor of deft G&W against pltff on the first, third & fourth counterclaims imposing a constructive trust of $8,698.50, now on deposit in account #27-45604, in the New York Bank for Savings, in the name of Richard Ives Rudell, & directing Rudell to turn over this fund to G&W. (6) In favor of deft. G&W against pltff on the first, third & fourth counterclaims, in the amount of $3,001.50 & (7) In favor of pltff against G&W dismissing the second counterclaim. Settle judgment & decree within ten (10) days.....MAC MAHON, J m/n
6-6-75	Filed Judgment #75,505 & Order that pltffs first claim against defts (Judelson & G&W) is dismissed. (2) Pltffs second claim against defts (Davis & G&W) is dismissed. (3) Pltffs third claim against defts (Gallagher & C. Billings) is granted in the am't of $45,000. (4) Pltffs third claim against deft (Davis) is dismissed. (5) First, third & fourth counterclaim of deft (G&W) against pltff re constructive trust of $8,698.50, in name of (Rudell) is granted, & that he turn over the said sum to deft (G&W). (6) First, third & fourth counterclaims of (G&W) against pltff in the am't of $3,001.50 is granted, & pltff is to pay deft (G&W) that am't. (7) Second counterclaim of deft (G&W) is dismissed. (8) The Clerk of the Court is authorized to enter judgment for costs to be taxed..... MAC MAHON, J Judgment Ent. 6-6-75, Clerk

DATE	PROCEEDINGS
6-6-75	Filed deft (Gallagher Presidents & Cynthia Billings) notice of appeal for that part of the final judgment entered 6-6-75, in favor of pltff, on the third claim for relief against the defts (Gallagher & Billings). Copies send to: Richard Ives Rudell & Davis J. Stolzar 600 Madison Ave. New York, N.Y. 10022 Proskauer Rose Goetz & Mendelsohn 300 Park Avenue, New York, N.Y. 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW J. LAWLOR

Plaintiff,

73. Civ.

- Against -

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON AND MARTIN S. DAVIS,

COMPLAINT

Defendants

Plaintiff, as and for his complaint herein by his attorneys, Richard Ives Rudell and Davis J. Stolzar, alleges as follows:

ALLEGATIONS APPLICABLE TO
ALL CAUSES OF ACTION

FIRST: Plaintiff is a citizen of the State of Connecticut and defendants THE GALLAGHER PRESIDENTS' REPORT INC., hereinafter referred to as "REPORT", and GULF & WESTERN INDUSTRIES, INC., hereinafter referred to as "GULF", are both corporations incorporated under the laws of the State of New York and having their respective places of business in the State of New York.

SECOND: The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

THIRD: Defendant BILLINGS is and at all times hereinafter mentioned was editor and president of REPORT.

FOURTH: Defendant JUDELSON is and at all times hereinafter mentioned was president of GULF.

FIFTH: Defendant DAVIS is and at all times hereinafter mentioned was senior vice president of GULF.

SIXTH: Plaintiff was until April 26, 1973 and for several years prior thereto employed as vice president-employee relations by GULF.

AS AND FOR A FIRST CAUSE
OF ACTION AGAINST DEFENDANTS
JUDELSON AND GULF

SEVENTH: Plaintiff repeats and realleges each and every allegation contained in Paragraphs "FIRST","SECOND","FOURTH", "FIFTH" and "SIXTH", as if fully set forth herein.

EIGHTH: On or about April 26, 1973 in the presence of plaintiff and other persons, defendant JUDELSON did state to plaintiff ". . . you went crazy this last year-- you have been grossly guilty of conflict of interest." and "You and that McDermott set up the Mark Group, opened a bank account and hoped to get away with a great deal of money . . .".

NINTH: That the statements made by defendant JUDELSON were made in the course of his employment by GULF.

TENTH: That the statements made by defendant JUDELSON were untrue, false and defamatory.

ELEVENTH: That as a result of such false and defamatory statements, plaintiff was caused to resign from GULF and up to the present time has been unable to obtain other employment and has otherwise been greatly injured in his credit and

reputation and suffered great pain and mental anguish, to plaintiff's damage in the sum of $2,000,000.

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AS AND FOR A SECOND CAUSE
OF ACTION AGAINST DEFENDANTS
DAVIS AND GULF

TWELFTH: Plaintiff repeats and realleges each and every allegation contained in Paragraphs "FIRST" through "SIXTH" inclusive as if fully set forth herein.

THIRTEENTH: Upon information and belief some time between on or about April 26, 1973 and May 22, 1973 defendant DAVIS did state to defendant BILLINGS and/or another employee or other employees of REPORT that plaintiff had extracted fees from GULF for placement of executives with GULF.

FOURTEENTH: That the statement made by defendant DAVIS was made in the course of his employment by GULF.

FIFTEENTH: That the statement made by defendant DAVIS was untrue, false and defamatory.

SIXTEENTH: That as a result of such false and defamatory statement, defendant BILLINGS caused REPORT to publish the said statement of DAVIS in its May 22, 1973 edition of "The Gallagher Presidents' Report".

SEVENTEENTH: That as a result of such false and defamatory statements, plaintiff from the time of publication up to the present time has been unable to obtain other employment and has otherwise been greatly injured in his credit and reputation and suffered great pain and mental anguish, to plaintiff's damage in the sum of $2,000,000.

AS AND FOR A THIRD CAUSE
OF ACTION AGAINST DEFENDANTS
REPORT, BILLINGS AND DAVIS

EIGHTEENTH: Plaintiff repeats and alleges each and every allegation contained in Paragraphs "FIRST" through "SIXTH", inclusive, and "THIRTEENTH" through "SIXTEENTH", inclusive, as if fully set forth herein.

NINETEENTH: Upon information and belief, that the statement made by defendant DAVIS as alleged in Paragraph "THIRTEENTH" hereof was made with the malicious intention and for the purpose of having the same published in REPORT's "The Gallagher Presidents' Report".

TWENTIETH: At all times herein mentioned REPORT was and still is the publisher of a weekly newsletter of general circulation, published in the City of New York and known as "The Gallagher Presidents' Report".

TWENTY-FIRST: On the 22nd day of May 1973, defendant BILLINGS caused to be and REPORT maliciously published in the said newsletter of and concerning the plaintiff the following matter:

" 'CHARLIE WONDERFUL' BLUHDORN CRACKS DOWN ON EXECUTIVES. Gulf & Western Industries chairman forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as v-p employee relations. Lawlor in charge of G&W personnel department. Reportedly set up dummy corporation Mark Group. Opened bank account for dummy corporation. Channeled unsolicited job resumes to Mark Group. Extracted fees for placement of executives with G& W. Charlie eliminates title. Turns over Lawlor's duties to director of personnel David Foreman."

TWENTY-SECOND: The matter so published is untrue, false, and defamatory.

TWENTY-THIRD: As a result of the publication of such false and defamatory statement, plaintiff, up to the present

time, has been unable to obtain other employment and has otherwise been greatly injured in his credit and reputation and suffered great pain and mental anguish, to plaintiff's damage in the sum of $ 2,000,000.

Wherefore, Plaintiff prays (1) that he have and recover from the defendants JUDELSON and GULF and each of them, on the first cause of action, the sum of $ 2,000,000, together with his costs herein, (2) that he have and recover from the defendants DAVIS and GULF, and each of them, on the second cause of action, the sum of $ 2,000,000, together with his costs herein, and (3) that he have and recover from the defendants REPORT, BILLINGS and DAVIS, and each of them, on the third cause of action, the sum of $ 2,000,000, together with his costs herein.

Richard Ives Rudell

RICHARD IVES RUDELL and DAVIS J. STOLZAR
Attorneys for Plaintiff
Office & P.O. Address
1501 Broadway
New York, New York 10036
Tel. No. 212-736 6642

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW J. LAWLOR,	73 Civ. 5443 LFM
Plaintiff,	ANSWER OF DEFENDANTS THE GALLAGHER PRESIDENTS' REPORT, INC., and CYNTHIA A. BILLINGS
-against-	
THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,	
Defendants.	

Defendants THE GALLAGHER PRESIDENTS' REPORT, INC., (hereinafter "Report") and CYNTHIA A. BILLINGS, (hereinafter "Billings"), by their attorneys, Townley, Updike, Carter & Rodgers, for their answer to plaintiff's complaint:

1. Admit that defendant Report is incorporated under the laws of the State of New York and has a place of business in the State of New York and except as so admitted, deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph FIRST of the complaint.

2. Deny each and every allegation contained in paragraph SECOND of the complaint.

3. Admit each and every allegation contained in paragraphs THIRD of the complaint.

4. Deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph FOURTH of the complaint.

5. Deny knowledge or information sufficient to form

a belief as to each and every allegation contained in paragraph FIFTH of the complaint.

6. Admit that plaintiff was employed as vice president-employee relations by GULF and except as so admitted deny knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph SIXTH of the complaint.

AS TO THE ALLEGED FIRST CAUSE OF ACTION AGAINST DEFENDANTS JUDELSON AND GULF:

7. Defendants Report and Billings do not plead to such cause of action since it is not directed to either of said defendants.

AS TO THE ALLEGED SECOND CAUSE OF ACTION AGAINST DEFENDANTS DAVIS AND GULF:

8. Defendants Report and Billings do not plead to such cause of action (except to the extent contained in their answer to the third alleged cause of action infra) since it is not directed to either of said defendants.

AS TO THE ALLEGED THIRD CAUSE OF ACTION AGAINST DEFENDANTS REPORT, BILLINGS AND DAVIS:

9. With respect to paragraph EIGHTEENTH of the complaint:

A. Repeat and reallege each and every admission and denial contained in paragraph 1 through 6 hereof.

B. Deny each and every allegation contained in paragraph THIRTEENTH of the complaint.

C. Deny each and every allegation contained in paragraph FOURTEENTH of the complaint.

D. Deny each and every allegation contained in paragraph FIFTEENTH of the complaint.

E. Deny each and every allegation contained in paragraph SIXTEENTH of the complaint.

10. Deny each and every allegation contained in paragraph NINETEENTH of the complaint.

11. Admit each and every allegation contained in paragraph TWENTIETH of the complaint.

12. Admit that the words quoted in paragraph TWENTY-FIRST of the complaint were published by defendant Report in its newsletter dated May 22, 1973 and except as so admitted, deny each and every allegation contained in paragraph TWENTY-FIRST of the complaint.

13. Deny each and every allegation contained in paragraph TWENTY-SECOND of the complaint.

14. Deny each and every allegation contained in paragraph TWENTY-THIRD of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE TO THE COMPLAINT, DEFENDANTS REPORT AND BILLINGS ALLEGE:

15. The complaint fails to state a claim against defendants Report and Billings upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE TO THE COMPLAINT, DEFENDANTS REPORT AND BILLINGS ALLEGE:

16. The matter complained of is true in substance.

FOR A THIRD AFFIRMATIVE DEFENSE TO THE COMPLAINT, DEFENDANTS REPORT AND BILLINGS ALLEGE:

17. The matter complained of concerned a matter of public interest, was published by said defendants in the honest belief of its truth without knowledge of any falsity and without malice toward plaintiff and its publication was and is privileged under the federal and state constitutions.

WHEREFORE defendants The Gallagher Presidents' Report, Inc. and Billings demand judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated: New York, New York
March 29, 1974

TOWNLEY, UPDIKE, CARTER & RODGERS

By: _____
A Member of the Firm
Attorneys for Defendants, The Gallagher Presidents' Report, Inc. and Cynthia A. Billings
Office and P.O. Address
220 East 42nd Street
New York, New York 10017
(212) 682 4567

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13A

- x

MATTHEW J. LAWLOR,

Plaintiff,

-against-

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

- -x

73 Civ. 5443 (LFM)

ANSWER AND COUNTER-CLAIMS

Defendant Gulf & Western Industries, Inc., David N. Judelson and Martin S. Davis, by their attorneys, Hill, Betts & Nash, for their answer to the complaint herein:

ANSWERING THE ALLEGATIONS APPLICABLE TO ALL ALLEGED CAUSES OF ACTION.

1. Deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph FIRST of the complaint, except admit that defendant Gulf & Western Industries, Inc. is a corporation organized under the laws of Delaware having a place of business in the State of New York.

2. Deny the allegations contained in Paragraph SECOND of the complaint.

3. Deny any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph THIRD of the complaint.

4. Admit the allegations contained in Paragraph FOURTH, FIFTH and SIXTH of the complaint.

ANSWERING THE FIRST ALLEGED
CAUSE OF ACTION,
DEFENDANTS JUDELSON AND GULF

5. Answering Paragraph SEVENTH of the complaint, repeat, reiterate and reallege each and every admission, denial, and denial of knowledge or information as hereinbefore set forth, with the same force and effect as if herein repeated and set forth at length.

6. Deny the allegations contained in Paragraphs EIGHTH, NINTH, TENTH and ELEVENTH of the complaint.

ANSWERING THE SECOND ALLEGED
CAUSE OF ACTION,
DEFENDANT DAVIS AND GULF

7. Deny the allegations contained in Paragraphs TWELFTH, THIRTEENTH, FOURTEENTH, FIFTEENTH SIXTEENTH and SEVENTEENTH of the complaint.

ANSWERING THE THIRD ALLEGED
CAUSE OF ACTION,
DEFENDANT DAVIS

8. Answering Paragraph EIGHTEENTH of the complaint, repeats, reiterates and realleges each and every admission, denial, and denial of knowledge or information as hereinbefore set forth, with the same force and effect as if herein repeated and set forth at length.

9. Denies the allegations contained in Paragraph NINETEENTH of the complaint.

10. Denies any knowledge or information sufficient to form a belief as to the allegations contained in Paragraph TWENTIETH of the complaint.

11. Denies the allegations contained in Paragraph TWENTY-FIRST of the complaint except admits that the words set forth in quotation marks therein appeared in "The Gallagher Presidents' Report" on the date set forth.

12. Denies the allegations contained in Paragraphs TWENTY-SECOND and TWENTY-THIRD of the complaint.

AS AND FOR A FIRST DEFENSE TO THE FIRST ALLEGED CAUSE OF ACTION, DEFENDANTS JUDELSON AND GULF ALLEGE:

13. The complaint fails to state a claim against defendants Judelson or Gulf upon which relief can be granted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO THE FIRST ALLEGED CAUSE OF ACTION, DEFENDANTS JUDELSON AND GULF ALLEGE:

14. The alleged words referred to in Paragraph EIGHTH of the complaint are in their nature and ordinary meaning true and constitute fair comment, expressed in good faith, without malice, towards the plaintiff herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO THE FIRST ALLEGED CAUSE OF ACTION, DEFENDANTS JUDELSON AND GULF ALLEGE:

15. The alleged words referred to in Paragraph EIGHTH of the complaint were uttered during a meeting of corporate officials of defendant Gulf who were in authority, interested in and responsible for the operations of said

corporation. At the time of said meeting said individuals had a lawful interest in and a fiduciary duty to explore the matter of plaintiff's continued employment by defendant Gulf or the termination thereof. The alleged words referred to were uttered in the performance of such duty and in the furtherance of such interest in the belief of the truth thereof and without malice towards the plaintiff, and said alleged words were privileged.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO THE FIRST ALLEGED CAUSE OF ACTION, DEFENDANTS DAVIS AND GULF ALLEGE:

16. The alleged words referred to were based on information believed to be true and were uttered in good faith and without malice towards the plaintiff.

AS AND FOR A FIRST DEFENSE TO THE SECOND ALLEGED CAUSE OF ACTION, DEFENDANTS DAVIS AND GULF ALLEGE:

17. The complaint fails to state a claim against defendants Davis or Gulf upon which relief can be granted.

AS AND FOR A FIRST DEFENSE TO THE THIRD ALLEGED CAUSE OF ACTION, DEFENDANT DAVIS ALLEGES:

18. The complaint fails to state a claim against defendant Davis upon which relief can be granted.

FIRST
FOURTH COUNTERCLAIM

19. The plaintiff was until April 26, 1973 and for several years prior thereto employed as Vice President - Employee Relations by the defendant Gulf.

20. By virtue of the plaintiff's status as an officer of the defendant Gulf and his confidential and fiduciary relationship with his said employer, the plaintiff was entrusted with and acquired special knowledge of confidential resumes and applications for employment submitted by applicants seeking executive positions with the defendant Gulf and its subsidiaries. 17A

21. Said resumes and confidential information, belonged to and constituted a valuable asset of the defendant Gulf.

22. On numerous occasions during the period, January 1973 through April 1973 and prior thereto, the plaintiff, acting alone and in concert with others, abused his fiduciary obligations and exploited for his personal benefit the special knowledge and information belonging to the defendant Gulf which was entrusted to him, in that without the knowledge or consent of the defendant Gulf, plaintiff forwarded or acquiesced in the forwarding of a number of said executive resumes and confidential records to outside firms or ventures known as the Mark Group or Mark Communications, for the purpose of promoting the development of such firms and ventures for his personal profit.

23. On information and belief, the plaintiff has received payment, directly or indirectly, in the form of commissions, profits, credits or control over the use of proceeds in those instances in which the said Mark Group or Mark Communications has for a fee placed in employment with employers other than the defendant Gulf, applicants whose resumes and records had been furnished by plaintiff in the manner set forth in Paragraph 22 herein.

24. The plaintiff is not entitled to retain the said commissions, profits, credits or proceeds and should be directed to account and pay over to the defendant Gulf said amounts, and a constructive trust in favor of defendant Gulf should be imposed thereon.

SECOND COUNTERCLAIM

25. Defendant Gulf repeats and realleges each and every allegation contained in Paragraphs 19, 20, 21, 22 and 23 as if fully set forth herein.

26. Defendant Gulf has been damaged in excess of the amount of $10,000.00.

THIRD COUNTERCLAIM

27. Defendant Gulf repeats and realleges each and every allegation contained in Paragraph 19, 20 and 21 as if fully set forth herein.

28. In or about January 1973, the resume of Charles W. Tomlinson, was forwarded to the defendant Gulf for consideration.

29. Said resume was entrusted to the plaintiff's control and consideration.

30. Without the knowledge or consent of defendant Gulf, said resume was forwarded by or with the knowledge and consent of plaintiff to the Mark Group, 31 Turn of River Road, Stamford, Connecticut.

31. As the result of the recruitment services of the said Mark Group, Charles W. Tomlinson was thereafter employed by Polymer Industries, Incorporated, 1200 High Ridge Road, Stamford, Connecticut.

32. In or about April 1973, Polymer Industries remitted the sum of $9,000.00 to the Mark Group in payment of professional services for the recruitment of Charles W. Tomlinson.

33. On information and belief, the plaintiff has received a portion of said proceeds, directly or indirectly, in the form of commissions, profits or credits, and otherwise personally has been enriched as a result of the payment of said amounts and his control over the application and use of said proceeds.

34. The plaintiff is not entitled to retain the said commissions, profits, credits or proceeds and should be directed to account and pay over to the defendant Gulf said amounts, and a constructive trust in favor of defendant Gulf should be imposed thereon.

FOURTH COUNTERCLAIM

35. The plaintiff was until April 26, 1973 and for several years prior thereto employed as Vice President - Employee Relations by the defendant Gulf.

36. In or about March, 1973, and while employed by the defendant Gulf, the plaintiff aided an executive employed in defendant Gulf's Tax Department in securing employment with another employer.

37. Without the knowledge or consent of defendant Gulf, the plaintiff, acting alone and in concert with others, directed said employee to the Mark Group or Mark Communications and thereafter received payment, directly or indirectly, in the form of fees, commissions, profits, credits, or control over proceeds, upon the placement of the said employee with a new and different employer.

38. On information and belief, the plaintiff has received the sum of $2,700.00.

39. Plaintiff is not entitled to retain the said commissions, profits, credits or proceeds and should be directed to account and pay over to the defendant Gulf said amounts, and a constructive trust in favor of defendant Gulf should be imposed thereon.

WHEREFORE, defendants David N. Judelson and Gulf & Western Industries, Inc., demand judgment dismissing the first alleged cause of action against each of them, together with costs and disbursements; defendants Martin S. Davis and Gulf & Western Industries, Inc., demand judgment dismissing the second alleged cause of action against each of them; and defendant Martin S. Davis demands judgment dismissing the third alleged cause of action, together with costs and disbursements; and defendant Gulf & Western Industries, Inc., demands judgment granting the counterclaims against the plaintiff, as follows:

(a) On the first counterclaim for relief, judgment directing plaintiff to account for and pay over to the defendant Gulf & Western Industries, Inc., all proceeds, commissions, and profits received by plaintiff, either directly or indirectly, from the Mark Group, Mark

Communications or any other firm, venture or source arising out of the placement of individuals whose resumes or applications were initially submitted to the defendant Gulf and then forwarded to said Mark Group, Mark Communications or any other firm, venture or source, and imposing a constructive trust in favor of the defendant Gulf & Western Industries, Inc. upon said proceeds, commissions, profits and amounts.

(b) On the second counterclaim for relief, judgment in an amount in excess of $10,000.00 together with costs and disbursements.

(c) On the third counterclaim for relief, judgment directing the plaintiff to account for and pay over to the defendant Gulf & Western Industries, Inc. all proceeds, commissions and profits received by him, either directly or indirectly, from or on behalf of the Mark Group or Mark Communications as a result of the placing of Charles W. Tomlinson with Polymer Industries, and imposing a constructive trust in favor of defendant Gulf & Western Industries, Inc. upon said proceeds, commissions, profits and amounts.

(d) On the fourth counterclaim for relief, judgment directing the plaintiff to account for and pay over to the defendant Gulf & Western Industries, Inc. all proceeds, commissions and profits received by him, directly or indirectly, whether from or on behalf of the Mark Group or Mark Communications, as a result of the placing of the said employee of defendant Gulf with another employer, and imposing a constructive trust in favor of defendant Gulf & Western Industries, Inc. upon such proceeds, commissions, profits and amounts.

all together with costs and disbursements.

HILL, BETTS & NASH

By: Robert S. Blanc
A Member of the Firm
Attorneys for Defendants
GULF & WESTERN INDUSTRIES, INC.
DAVID N. JUDELSON and MARTIN S. DAVIS
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212 466-4900

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW J. LAMLOR,

Plaintiff,

73 Civ. LFM 5443

-against-

ANSWER TO COUNTERCLAIMS

THE GALLAGHER PRESIDENT'S REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

Plaintiff, as and for his answer to the counterclaims of defendant, GULF & WESTERN INDUSTRIES, INC., (herein after "GULF") herein alleges:

AS TO THE FIRST COUNTERCLAIM

FIRST: Denies each and every allegation contained in Paragraphs 22 and 23 of said counterclaim.

SECOND: Denies so much of Paragraph 24 of said counterclaim as demands a direction to pay over to GULF and the imposition of a constructive trust, plaintiff having heretofore and prior to the commencement of this action, acknowledged by his attorney, RICHARD IVES RUDELL, Esq. that "The Mark Group" was the property of GULF, and that the net proceeds of "The Mark Group" belonged to GULF, and said attorney tendered such net proceeds to GULF, which tender was refused.

AS TO THE SECOND COUNTERCLAIM

THIRD: Denies so much of Paragraph 25 of said counterclaim as repeats the allegations of Paragraphs 22 and 23 and Paragraph 26 in its entirety.

FOURTH: Denies Paragraphs 28, 29, 30, 31, and 33 of said counterclaim, except admits that Polymer Industries, Incorporated employed Charles W. Tomlinson through the services of Steven Markham, as commission agent of The Mark Group.

FIFTH: Denies so much of Paragraph 34 of said counterclaim as demands a direction to pay over to GULF and the imposition of a constructive trust, plaintiff having heretofore and prior to the commencement of this action acknowledged by his attorney, RICHARD IVES RUDELL, Esq. that "The Mark Group" was the property of GULF and that the net proceeds of "The Mark Group" belonged to GULF, and said attorney tendered such net proceeds to GULF, which tender was refused.

AS TO THE FOURTH COUNTERCLAIM

SIXTH: Denies each and every allegation contained in Paragraphs 37 and 38 of said counterclaim.

SEVENTH: Denies so much of Paragraph 39 of said counterclaim as demands a direction to pay over to GULF and imposition of a constructive trust, plaintiff having heretofore and prior to the commencement of this action acknowledged by his attorney, RICHARD IVES RUDELL, ESQ. that "The Mark Group" was the property of GULF and that the net proceeds of "The Mark Group" belonged to GULF, and said attorney tendered such net proceeds to GULF which tender was

WHEREFORE, plaintiff demands judgment dismissing all counterclaims of defendant GULF AND WESTERN INDUSTRIES, INC.

S/ RICHARD IVES RUDELL

RICHARD IVES RUDELL and
DAVIS J. STOLZAR
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW J. LAWLOR, Plaintiff, -against- THE GALLAGHER PRESIDENTS REPORT INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON, and MARTIN S. DAVIS, Defendants.	Before: HON. LLOYD F. MacMAHON, District Judge. 73 Civ. 5443

New York, October 22,23,24, 1974

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MATTHEW J. LAWLOR,

Plaintiff,

-against- 73 Civ. 5443

THE GALLAGHER PRESIDENTS REPORT INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON, and MARTIN S. DAVIS,

Defendants.

October 22, 1974
10:10 a.m.

BEFORE:

HON. LLOYD F. MAC MAHON,
District Judge

APPEARANCES:

DAVIS J. STOLZAR, ESQ. and
RICHARD IVES RUDELL, ESQ.,
Attorneys for the Plaintiff

Messrs. TOWNLEY, UPDIKE, CARTER & ROGERS
Attorneys for Defendants Gallagher
Presidents Report, Inc. and Cynthia A. Billings
BY: JOHN PAUL REINER, ESQ.,
of Counsel

Messrs. PROSKAUER, ROSE, GOETZ & MENDELSOHN
Attorneys for Defendants Gulf & Western
Industries, Inc., David N. Judelson, and
Martin S. Davis
BY: STEVEN J. STEIN, ESQ.,
JONATHAN M. HERMAN, ESQ.,
of Counsel.

(Case called.)

THE COURT: Proceed.

MR. STEIN: Your Honor, before we proceed with the case, may I make an application.

THE COURT: Surely.

MR. STEIN: I have a petition for the admission to practice before the bar of this court, my associate John Herman. The papers should be before your Honor. They were to have been in the 506 this morning and regularly brought on in that part, and because Mr. Herman is with me on this case and because he has been assisting me on this case, I asked the Clerk's Office to have it brought before your Honor.

THE COURT: Yes, make the motion.

MR. STEIN: I have known Mr. Herman since the summer of 1972 when he first came to work with our firm.

He is a graduate of the NYU Law School, in June '73, and since the fall over a year ago has been an associate of our firm, member of the New York Bar.

I have worked with Mr. Herman. I know his ability and character to be good and I am certain he would be a credit to the Bar of this Court.

THE COURT: I will grant the motion. We will swear you in later at the end of the day.

MR. STEIN: I should have thought of that, your Honor, I'm sorry.

MR. STOLZAR: May it please the Court, before we start.

Counsel for all parties met and agreed upon certain stipulations which would speed up the trial. Unfortunately we didn't commit these to a written document. However, the stipulations are as follows:

Paragraph 8 of the complaint is amended to set forth the specific words of the defendant Judelson as taken from the transcript of the taperecording of the April 26th, 1973 meeting between Lawlor, Judelson, Davis, Jones and McAward, as annexed hereto and indicated by the page number appearing in the margin thereof.

I do have a photocopy with the pages and --

THE COURT: Can you make it simple for me?

Set out the words on the record.

MR. STOLZAR: From page 10, Judelson's words:

"You don't feel, Matt, that there's any conflict of interest between your getting resumes here and giving them to the Mark Group, and having them place the people and getting a fee? Right?"

From page 11.

"You, in fact, Matt, have gotten letters, from

people, looking for jobs, innocently, that have been under the Mark Group letterhead, sent to people. You have received fees from Bushee and from, uh, uh, on this one placement - the fellow's name is Dambrosky, et..."

From page 16 and 17.

"I would say this Matt, that primarily is on the basis of this. I would say that if is, it has nothing to do with, what I consider to be totally fraudulent. I think your whole story here, is a, is a nice composite of what you think might be a plausible rationale for the whole situation, but I want to tell you that it absolutely defies gravity, I mean I refuse to accept anything you say Matt, I know exactly what was set up, I wasn't born yesterday. This company didn't get built by a bunch of idiots who happen to reside on the 42nd Floor, Matt. We are really not stupid, or if we were, this company wouldn't be as big as it is. I find it, Matt, a disgrace, that an officer of this company would enter into something like this, unbeknown to myself, who you reported to, as an absolute subterfuge to go ahead and take fees in a situation where you obviously had all of the ability to get people who would write here for resumes and put them in, I could even see you placing Mr. Boester, your own employee."

From page 17.

"I think it is entirely fraudulent Matt, it's an insult to my intelligence and everybody else's sitting in here that you would give this rationale for this story, you know it for what it is, I know it for what it is, Mr. McDermott definitely knows it for what it is, that there was an employee here receiving $21,000 a year in the name of this man, right? What was using his secretary to type up resumes."

From page 18.

"Now Matt, I told you, I gave you confidence when you came here, you did not return it Matt, in fact, you might have flipped a gear someplace along the line here, and is very obvious in case you want to know about it the Management Resources opened up your eyes to what could be done outside of the company, rather than inside of the company, and that's why the Mark Group was formed."

From page 20.

"But I want to tell you Matt, I'm not going to stand for it, I won't have for one second, I think that you must have been absolutely crazy, Matt. I'm not trying to give you a lecture, but you have gone ahead and you've ruined the job that you have here, you can get no recommendation fro me, Mr. Lawlor for any possible job."

From page 20.

"And I can really throw it at you, Matt. I could give you so much trouble, that you'll never want to wake up. Now, I'm not going to do that for one reason, Mr. Lawlor, I know you have a family, and I feel for your kids, I want to tell you that. And I shouldn't fee this way, and I know God-damned well I shouldn't, because I should be as high as my standards are with regard to this. I should be just that tough, too, when it comes to something like that."

From page 21.

"But don't expect me, or anybody else in this room, or anybody else on this floor, to accept the God-damned travesty that you've tried to perpetrate as the, as the purpose behind doing this whole thing. It is so deceitful, Matt, that it's even unbecoming to you to sit here and try to tell me that. Do you think I'm that stupid - do you really think that?"

I'm sorry, your Honor, my associate called my attention to the fact I misread a word on page 18; I read "You might have flipped a gear" the words are "You must have flipped a gear."

It is further stipulated by the parties that the documents heretofore marked as Plaintiff's Exhibit 1 through 19 and Defendants' Exhibits 1 through 31 are admitted into evidence without objection by counsel for the respective parties hereto.

The defendants stipulate to plaintiff's proposed findings of fact as follows: 1, 6, 7, 13, except for the word "nationwide."

Plaintiff and Defendants, The Gallagher Presidents Report and Cynthia A. Billings, stipulate to defendants' and Gulf and Western, Inc. proposed findings as follows: 1, 2, 3, 4, first sentence only. 5, 7, 8 and 9. Plaintiff and defendant Gulf and Western stipulate to defendant The Gallagher President Reports, Inc. proposed findings of facts as follows: 1, 2, 3, 4, 6, except for the words "news item" and 7, except for the word "news item", 8, 9, and 12.

And, we are ready to proceed, your Honor.

THE COURT: Is it so stipulated, gentlemen?

MR. REINER: So stipulated, your Honor.

MR. STEIN: So stipulated, your Honor. I would

like to address a motion based on the stipulation, if I might.

THE COURT: All right.

MR. STEIN: Your Honor, it has been stipulated plaintiff was the vice president of Employee Relations of Gulf and Western on April 26, 1973 when the alleged libelous slanderous statements were made.

It has been stipulated the alleged maker of the statement, David Judelson was at that time President and Director of defendant Gulf and Western and Senior Management Official with responsibility over Mr. Lawlor.

It has been stipulated that the others present in the room were as follows:

Mr. Davis, Senior Vice President and Director; Mr. McAward, President of McAward Associations, Inc., Investigative Consultants, worked for Gulf and Western on special assignments, relating to security matters. Mr. Jones was Gulf and Western's house counsel. It was also stipulated the plaintiff reported to Judelson and he had responsibility to implement and coordinate policies and programs covering among other things the recruitment of executives for the company.

We have a stipulation as to who all these people were and how they got into the room on April 26, 1973 and what was said. I hearby move for summary judgment on the

first cause of action in the complaint on the ground that A, there was no publication, because this was an intra-corporate matter, that all the people in the room were either senior management officials or an agent specially hired to conduct an investigation by the senior management officials.

I move for summary judgment on the ground also that the statements made are entitled to a qualified privilege and unless actual malice is pleaded and established, with certainty, the privilege, a qualified one, must be applicable and I point out in the first cause of action in the complaint, there is no allegation of actual malice, nor could there be.

THE COURT: I will reserve decision on it.

MR. STOLZAR: Your Honor, I realize you have reserved decision but in so doing, may I point out Mr. McAward was employed from time to time as a special investigator relative to security matters, that as it will develop from the evidence of the defendant Gulf and Western, the report of Mr. McAward, that he stumbled on something and then followed through while he was conducting a security check in relationship to something entirely apart from the substance of this situation, that he was not a regular employee of Gulf and Western and he was a total outsider, he was an investigator of fact.

hpe 4

I call Mr. Lawlor to the stand, please.

MATTHEW JOHN LAWLOR, called as a witness on his own behalf, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: I assume you are giving the Court a copy of the regular official transcript. Have you ordered a copy of the transcript?

MR. STEIN: Yes, of course.

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Lawlor, would you state your name and address for the record?

A Matthew John Lawlor, 14 Zora Lane, Stamford, Connecticut.

Q Are you the plaintiff in this action?

A Yes, I am.

Q Will you state your educational history?

A I graduated from St. Francis Elementary Parochial High School -- elementary school in 1941, I graduated from St. Marie's Academy in New Haven in 1945, I spent approximately six months at St. Thomas Seminary in Bloomfield, Connecticut in the study of the priesthood, I left there and went into the service, proceeded then after the service to go to the Junior College of Commerce for two years.

I transferred to Cornell University from which I graduated in 1953, Bachelor of Science Degree in Industrial Relations.

Then, while I was at work in Pittsburgh, I took night courses which led to a Master of Letters Degree from the University of Pittsburgh in about 1955 or '56.

Q Would you state your military service history?

A Well, at the time I was in the seminary, I left -- this was in 1945, just about the tail end of World War II -- I joined the Marine Corp for a two-year tour of duty; from 45 to 1947.

When I left the Marine Corp I joined the inactive reserve along with a group of other friends of mine, acquaintances I had met in the service, and while I was at Cornell, my period of study was interrupted there by being recalled on September of 1950 to serve another year in the Korean War for the Marine Corp. and at the end of that year, about 1951, I received my discharge completely then from the Marine Corp and went back to Cornell.

Q Would you state your employment history?

A Well, in starting with the basic one in 1953, when I graduated from Cornell, the Jones and Laughlin Steel Corporation had come to the campus of Cornell to interview, I had had many interviews at that point but they offered a two-

year training program.

It sounded like a very good thing for me to do so I went with Jones and Laughlin about February of '53, and worked with them until 1959, and during that period of time handled labor relations and worked myself up through various stages of the labor relations department.

In 1959, Crucible Steel Company of America, which is also in Pittsburgh, contacted me through the school, through Cornell, asked me if I would consider going with them.

They made a very attractive offer in terms of career, and I decided to go with them. I went in 1959 and continued working with them during which period of time I worked myself up to the top personnel industrial relations officer for Crucible until 1968.

In December of 1967 I was interviewed by Gulf and Western and made an offer. I couldn't possibly go to the job until the end of January, really, I guess January 29th of '69 -- '68, I'm sorry, and I started in what at that point was no department at all.

They didn't have an employee relations departmen so I was offered the job to come in. I started out as director of -- do you want me to carry the employment through Gulf and Western, Mr. Stolzar?

Q Yes.

A I started out as a director of labor relations because at that time that's what the company recognized they needed most. They had no one to deal with their unions.

During the course of this discussion, I was hired by Mr. Judelson, to whom I was to report to. He is President of the company.

As I say, although I started as director of labor relations which in his opinion had to do with working with unions --

MR. STEIN: Your Honor, I am going to object to the witness' characterization of Mr. Judelson's opinion.

THE COURT: Yes. You can state anything he said when you were being employed by him, if you wish. Give us the conversation.

THE WITNESS: Yes.

THE COURT: Not what was going on in his mind, or yours.

THE WITNESS: Yes, sir.

A (Continuing) The point I'm trying to make is, I was brought in with the understanding it would be to handle labor relations.

During the course of my employment with Gulf and Western, I started as I say, in January of '68, and I worked

there continuously until April 23rd of 1973, which was the time of my dismissal.

In that time, within a period of one year, I was elected as vice president by the board of directors of the total industrial relations area; the distinction being by that time I was in charge not only of labor relations, I was in charge of personnel, I was in charge of benefits and then, because we were moving into a new building and no one had taken complete charge of the transition of bringing several subsidiary companies around New York into a new building, I became involved in, and in charge of the total office administration wing of Gulf and Western.

That generall is the employment history.

Q Were you ever accused of any conflict of interest or of any other impropriety with respect to any of your employments prior to April 26, 1973?

A No.

Q What were your duties at Gulf and Western immediately prior to April 26, 1973?

A Prior to April 26, as I indicated before, by this time I had become an elected vice president of employee relations.

I believe I had approximately 90 people reporting to me in that capacity and I had responsibility for a budget

that ran in the neighborhood of $2 million in terms of what we had to try to work with.

In labor relations I had a director of labor relations by that time reporting to me who had a staff of his own. I would get involved in the most serious of labor problems. We had some very serious strikes which purported to practically bring about the shutdowns of the plants. In these areas I would get totally involved and direct it so that our end result was achieved, which it was.

In the area of pensions and benefits, when I first arrived there, there was a vice president of insurance, Bill Smith. Bill Smith at that time had charge of insurance and pensions. Maybe six months after I was there, I noticed that more and more of the pension problems were being referred over to me and what really happened is that the insurance function was taken directly out of the corporation.

Bill was allowed to --

MR. STEIN: Your Honor, I am going to object to this. My objection is on the grounds of relevancy. He is getting into the detail of insurance.

THE COURT: Sustained. I don't see it's relevance really.

MR. STOLZAR: If your Honor please, this one particular point about the establishment of insurance will have

some bearing on further testimony with respect to other work that Mr. Lawlor did which is directly involved in this case, either setting up of --

THE COURT: All right, there is no jury. I will take some of it but not too extensive, because it seems to me too wide a mark.

A (Continuing) Yes, sir.

The point I was making was that the scope of my job changed completely from 1968 until 1973, and I was trying to give the flavor of the reason for the change in scope. But, on that particular point which I felt was relevant is that the individual who then was in charge of insurance, then moved on down to Texas, where vis-a-vis an insurance firm that Gulf and Western entered into some joint venture, putting Mr. Smith in charge of it, became the insurance vehicle, if you will, for all of the corporation, whereas that was handled by us as vice president within the company.

The pension portion obviously was put over to me because this would not have gone hand in glove in a move down to Houston because all of our pension work had to be done in and out of New York.

I indicated, in the personnel area, I had a director of personnel reporting to me. Under personnel we were a conglomerate, we had over a hundred companies. We had

some direct line relationship, we had a lot of dotted line relationships with people that would call us on an as-needed basis. It was part of my function to make sure that I coordinated with them. The first few employment assignments we ever had, one was to find a new president for Consolidated Cigar. I handled that directly for Mr. Judelson.

The second assignment I recall was for a new president of New Jersey Zinc, a Mr. Glen Wilson, and I handled that directly.

Then there were many other assignments at the highest level of the corporation, whether they be vice presidents, possibly on down to a director level, director of a department, where oftentimes I had to specifically become involved and handle that at the direction of Mr. Judelson or Mr. Bluhdorn, who was chairman of the board.

There were many times Mr. Bluhdorn wanted specific work done and it was not to be done with the knowledge of anyone other than Mr. Bluhdorn and myself. That's the relationship I established with him, the same as with Mr. Judelson.

In the area of office administration, I had a director of office administration reporting to me and this was necessary because I believe in 1970, by the time we moved into the new building, which was at Columbus Circle someone

had to take total charge and control of this interrogation of the other subsidiary companies that came in, the setting up of centralized facilities for mail distribution, printing and what have you, so I assumed that and then named a director of administration and that was my function.

So, in total, that was the scope of my job in April of 1973.

Q Can you tell us approximately how many employees Gulf and Western and its subsidiaries had on April 26th, 1973?

A Well, the number of employees overall, that varied. It depended -- it was reported in the annual report. Sometimes it ran 75 to 80,000, but I think that this had to do with a lot of international.

I think if you took it down to the domestic scene, it would seem to me about 49,000.

THE COURT: These are direct employees or employees of the company plus subsidiaries?

THE WITNESS: Employees of the company plus subsidiaries. When I say the company, your Honor, I talk about Gulf and Western in total.

Q What salary and fringes were you receiving from Gulf and Western just prior to your termination?

A Well, I received a base salary of $60,000 that

I had been receiving for approximately a year. Then, on top of that, the fringe benefits, I had 5,000 Gulf and Western warrants which varied in value, but they had reached a high of I think somewhere around 15, so if you spread that over the five years I was with Gulf and Western, that would have been another 15,000 there.

I had 5500 options ranging in different prices which I obviously lost when I left the corporation. I had accrued in the pension program five or six years of accrual which had to amount to in the neighborhood of approximately $5,000 a year.

We had a profit sharing plan which I participated in where I was allowed to put in 6 per cent of my salary to be matched by 25 per cent of the corporation and that averaged out over the course of the last few years to about another 5,000.

I had a Cadillac which we were given every two years, with just -- with everything on it, you just named what you wanted and you got it, so I estimate that that would represent of about 5,000 a year.

We had garage paid for, paid for by the company, which was in an apartment building just down the street, which had to amount to a couple of thousand dollars for rent. I would say the maintenance, gas and all that was given to

to me -- all the gas was paid for by the company.

So, adding it all up, and then you had insurance -- we had a tremendous insurance package, this was in my area. We put in a long term disability insurance which today, if you try to buy it on the open market, I couldn't buy it personally myself for less than $4,000, $5,000. I had over a hundred thousand, closer to $200,000 of life insurance, which I lost as of the time I left, and a tremendous hospitalization benefits and they were all, of course, cut the day I left the corporation.

I would say, Mr. Stolzar, that that package would have to add up to 95 to $100,000 on balance.

MR. STEIN: Your Honor, that's the witness' opinion.

THE COURT: I will take it for what it is worth.

Q Mr. Lawlor, how frequently did you meet with Mr. Judelson, the President of Gulf and Western, while you were in Gulf and Western's employ?

A Well, in the beginning, in '68 through '70, we were at 437 Madison Avenue, which meant that we were all on one floor, the second floor of the ITT building, and at that time I was new with the company, handling various things, and we tried to have some staff meetings, so we would meet much more frequently than unfortunately the last couple of years

with the company.

If I saw Jim once a month or sometimes it would be a couple of times within a three month period -- there was no regularity whatsoever when I did see him.

Mr. Judelson told me specifically that in the area, in my area of industrial relation, especially the personnel area that he relied on me to handle that job in its entirety.

He had great faith in me, he told me. He told me that as far as he was concerned, only things that were -- to keep him apprised of things, was it necessary to get together.

When I did I would normally go up to see him, leave word that I wanted to see him, make up a list of ten or fifteen items and I would start down those items and tell him, and he wanted the gist of what you were talking about and then he would say right, right, no, or let's talk some more about that, or hold that.

So, in the normal course of my business, I just proceeded to take him exactly the way he said. I handled my total business, I gave him a business plan for the last couple of years wherein I outlined to him what we were doing and where we were going, and that seemed to suffice because he would review that and tell me fine, get on with it.

MR. STOLZAR: Your Honor --

THE COURT: How old are you?

THE WITNESS: I'm 47, sir.

MR. STOLZAR: I offer in evidence, previously marked Plaintiff's Exhibit number 1 and 2.

xx (Plaintiff's Exhibits 1 and 2 received in evidence.)

Q What was your relationship with defendant Martin Davis, while you and he were at Gulf and Western?

A When I first joined Gulf and Western in '68, Martin Davis was executive vice president of Paramount Pictures Corporation, which happened to be located in New York, over at the Paramount building on Broadway.

He had a director of labor relations reporting to him, Frank is his first name, the second name just escapes me --

MR. STEIN: Your Honor, the question was what was the witness' relationship with Mr. Davis.

THE COURT: Yes, you are not responding to it, I'm afraid, Mr. Lawlor.

Listen carefully to the question.

Q What was your relationship with Davis while you and he were at Gulf and Western?

A The only point I was making quickly, he was with

Paramount and then came over to Gulf and Western as a senior vice president in charge of publications and stockholder relations.

The only relationship I had with him in the period of time when he was over at Paramount was to help him to put a pension program in for Paramount. When he came to Gulf and Western, the relationship I would have with him there would be to sometimes assist him if he were looking for someone working in his own department. I didn't report to or had no reporting relationship whatsoever with Mr. Davis.

Q Who is James Judge?

A James Judge is a person in the public relations field. He had been vice president of public relations for Crusible Steel when I was there. After Mr. Davis came over to Gulf and Western --

MR. STEIN: Your Honor, I think the man James Judge has been identified.

THE COURT: I think so. I think we are getting pretty far afield here. This is a narrow issue. This man has been slandered and liabled. That is all I'm concerned with.

MR. STOLZAR: We are trying to establish a basis for the allegation --

THE COURT: I understand, but I think you are going into it much too far. This is a finite life we live

and I have other work, cases following this one, so let's not waste our time.

Q Did there ever come a time when you had a disagreement with Davis or with respect to Davis' work at Gulf and Western that came to the attention of Mr. Bluhdorn or Mr. Judelson?

A Yes --

MR. STEIN: Your Honor, I will object to that question. I don't understand the relevance of Mr. Davis' work. Mr. Davis --

THE COURT: I don't either. Can you demonstrate its relevance?

MR. STOLZAR: Yes, your Honor. We are establishing the malice in one respect.

THE COURT: Davis isn't alleged to have made the remarks?

MR. STOLZAR: He is in the second cause of action, if your Honor please, as having made the statements to the Gallaghar Presidents Reports. We are trying to establish for your Honor the basis on which we conclude that.

THE COURT: All right.

MR. STEIN: Your Honor, I might add the cause of action Mr. Stolzar just referred to is fatally defective because it fails to set forth --

THE COURT: Yes, I know your point. It would appear to be, I might say, but we will take it anyway, on a motion to throw out that it fails to comply with a New York statute.

MR. STOLZAR: Your Honor, is that bound with respect to this procedural matter?

THE COURT: Let me worry about that.

Q Would you tell us about this situation with Davis?

A Yes, I --

MR. STEIN: Your Honor, I press my objection on this situation on the grounds of relevancy.

THE COURT: Overruled.

A When Bob Pickett, who had been vice president of public relations for Gulf and Western, left the employ of the company, Mr. Davis was in charge, as I said before, stockholder relations and public relations and reported in that order.

He was looking for a vice president of public relations. I had known Mr. Judge for about a year while I was at Crucible Steel. I had known him by reputation, watched him and thought he was outstanding.

I mentioned this to Mr. Judelson whom I reported to. Mr. Judelson suggested that I talk to Mr. Davis about it.

I went to Mr. Davis and I had asked Mr. Judge to send a coph of hisresume, which he did, and I gave it to Mr. Davis.

Mr. Davis reviewed it. He brought Mr. Judge in for an interview. He then had Mr. Judge go to Grand Rapids, Michigan, to be interviewed by Mr. John DeVries, who was a vice president of long standing with the company and very well respected by the corporation.

The next thing I know, I got a telephone home on a Sunday, from Jim Judge, telling me --

MR. STEIN: Your Honor, I object. What Mr. Judge said to Mr. Lawlor is hearsay.

THE COURT: Yes.

MR. STOLZAR: The conversation is part of the -- not so much what he said -- I mean, the facts what he was talking about, but the conversation is part of the incident that Mr. Lawlor is describing.

THE COURT: How does that take it out of the hearsay?

MR. STOLZAR: Well, what he may have said to Mr. Lawlor is not what we are seeking to prove as a matter of fact.

THE COURT: You just want to prove the fact that it was said, not for the truth of what was said?

MR. STOLZAR: That is correct.

THE COURT: All right, go ahead.

A The point of the matter is I got a telephone call on a Sunday night. By this time Mr. Judge had met Mr. Bluhdorn, Mr. Judelson, Mr. Davis, Mr. DeVries, and they were all in accord that he was an outstanding man. Judelson specifically told me that he is an outstanding guy, "I would like to have him on this team."

I said, fine. When I got that phone call on Sunday night, the significance was that he told me that he would not come to work for Gulf and Western and I said, "Wait a minute, you have had interviews, you met all these people, I don't understand what this is all about."

At that point, he told me about some things that Mr. Davis had said to him, which I said, "Look, I--"

MR. STEIN: We are getting into what Mr. Judge told Mr. Lawlor. I think it is hearsay --

THE COURT: I am taking it for the fact it was said and not for the truth of it.

Go ahead. If it turns out to be ultimate hearsay, I surely will disregard it. Let's not worry about that. There is no jury here. Let's go.

All right, proceed.

A The key point is that he told me -- I asked him

"Why would you now decide -- you indicate you want to come to work for the company, why would you decide now --" he told me Mr. Davis had made statements to him and as a result of that he wasn't about to get involved in something that could be as political as what it sounded to him. I told him don't make any move whatsoever, let me call Mr. Judelson.

I called Judelson and I told him. Judelson told me to get that man to come to work for the company. I told him under the circumstances the man had said no, I just couldn't perform a miracle.

I went in to work the following morning, which was a Monday morning. I was in my office and Mr. Judelson came into my office and said to me, "Come with me."

I went with him and we went down to Mr. Bluhdorn's office -- this was at 437 Madison Avenue. We were all on the same floor.

When we went into Bluhdorn's office, there was Mr. Judelson, Mr. Bluhdorn, all the senior officers, including Mr. Abbott, Mr. Gaston, Mr. Davis.

I walked in and Mr. Bluhdorn said to me, "What do you know about the Jim Judge situation." And, I looked at him, and I said I know I recommended Jim to be hired. Then he said, "Well, why isn't he going to take the job"and I told him exactly what was told to me over the telephone. He then

indicated to me that he had questioned as to whether Mr. Davis would have done some of the things that Mr. Judge said he did.

I told him that Judge had indicated to me that he had talked to John DeVries out in Grand Rapids and that if Charlie had any questions, get on the telephone, call DeVries in Grand Rapids and if John didn't tell him what I had told him, then forget the whole thing and I would leave.

Mr. Bluhdorn dialed Mr. DeVries' number, put him on the squak box, all of us were sitting in that room. He asked him the questions, what was said. John DeVries told him exactly what was said. He asked John DeVries why didn't you call me. He said because I assume the reason you are calling me today is because Matt's there talking to you about it because Jim Judge told me he told Matt and I knew he would do something about this.

The whole sum and substance of this was that the statements that were said by DeVries, by Judge to and from Mr. Bluhdorn over that loudspeaker in the office, was an undermining type of thing of the president of that company. And with that, Bluhdorn said to DeVries that Davis denied any such thing and DeVries said then you can tell Davis exactly where to go.

And with that Charlies said that you and he hung

up. At that point I felt that it was to my best interest -- I had said all I knew about the whole situation and there were all senior officers in that room, and excused myself and at that point they had a separate meeting and subsequent to that, Mr. Judge was not hired but it was pretty clear that Mr. Davis was totally upset that I had brought the whole matter to a head.

This is the point.

MR. STEIN: Your Honor, I move to strike the witness' answer as totally irrelevant to the issues in this case concerning whether or not he was slandered.

THE COURT: Overruled.

Q Were you ever told by anyone that Davis, subsequent to the Judge incident, made statements to the effect that he would get Matt Lawlor or something equivalent to that, and if so, would you tell us who told you?

A Subsequent to the -- well, statements were made to me, yes. Bob Shortell, who was a director of public relations reporting to Mr. Davis at a subsequent date to what we have been talking about, indicated to me that -- words to the effect that "I must have really done something to Mr. Davis. because he had it in for me, the comments that were made by Mr. Davis.

I brought a young man into my department who

worked in the pension area, who had been working for one of the others, a new man that had come to the company but who thought he didn't really have need for him anymore. When Ronston, Dick Ronston came down to me, I offered him the job and he said, Well, okay, I would like to work there, I would like to work, but he said I have some concern.

I said what's your concern. He said, "Well, I don't know what's really going to happen around here."

I said, "What are you talking about" and he told me --

MR. STEIN: Your Honor, I object to what Mr. Ronston allegedly said to Mr. Lawlor as alleged hearsay.

MR. STOLZAR: Again, your Honor, we are not offering the statements for the facts, proof of the facts, but the statement as made by defendant Davis.

THE COURT: I overrule it.

A (Continuing). The point is that Ronston indicated to me that Davis had told Shue, and Shue in turn had told Ronston that I wouldn't be in there much longer, that Mr. Davis would see to that. I assured him there was not one grain or ounce of truth to that, he had no concern. Then he did subsequently come to my department.

I brought Mr. Shue down and he and I had a real discussion about this. I believe I talked to Mr. Abbott, who

was a senior vice president, I talked to Mr. Judelson and I told him this kind of thing has got to stop in the corporation and there was a subsequent meeting of all of the officers in the company at which time Mr. Judelson and Mr. Bluhdorn made it crystal clear that any more discussion about what was going on in departments and making remarks about other people, or people in a department, it's got to stop and stop right away.

Now, this is again, just another instance. When I brought Mr. Fryer, who was at the Treasurer of Paramount Pictures, -- I got a call from Art Baron, who was financial vice president of the company. He told me he no longer had a need for Mr. Fryer. I said to him -- I then talked to Mr. Gaston, who was the executive vice president.

Mr. Gaston indicated to me as a result of Paramount and some on-going litigation, it was absolutely essential that Mr. Fryer continue working for Gulf and Western. I told him that I felt with Fryer's background, if he didn't mind a change in title from treasurer to director of office of administration, I was prepared to offer him that job.

I did. But I said in the meantime I want to tell Mr. Judelson what I had done. I went upstairs to tell Judgelson. He was incensed that I had offered the job to the man. I didn't understand why he was saying that. He said to me,

"You don't need a man like him working for you in your department."

I said, "But Him, he can do the work as far as I can see, and I've got to get these jobs done."

He told me that I could hire him on one stipulation and that is that he would have a meeting with Fryer and myself in his office before Fryer ever started work for me.

When we went up there to see him, he told Mr. Fryer in no uncertain terms that if he came to work for Matt Lawlor he didn't want any animosity as had been demonstrated in the past, he didn't want any more relationship between Fryer and Davis. Davis was now a senior vice president of Gulf and Western and he was going to be working at Gulf and Western for me and not for Davis, and just to make sure if there was ever any chicanery, any undermining, any Paramount tricks pulled, he personally would reach passed me and fire Fryer.

He told Fryer if he didn't understand that then he shouldn't accept the job. Joe said he was totally in agreement and he would not be involved in anything. Those are some specifics that I can recall.

Q Did you ever have any meetings with Jeremiah McAward prior to April 26, 1973?

A. Yes, I believe I had two meetings. When we move into -- well, it seems to me that the first time I ever met -- yes, the first time I met Mr. McAward, to the best of my recollection, would have been at a time we moved into the new building, and apparently Mr. Davis had hired him to do an electronic sweep of the 25th floor to be sure that there were no taps or other specific leaks that might be in that area, and possibly in other officer's areas.

I was presented with the report and with the bill, as I recall. I told Mr. McAward that I had not instituded or ordered that and I asked him who did, and he told me Mr. Davis and I told him fine, to take the bill to Mr. Davis and have it approved by him.

The second time -- when we went into that new building, the building was about in three quarters completion stage. I had tremendous security problems up there. I hired outside guards in uniform so that we would have them in and out of the building, and at all the various entrances, construction people had left entrances into the building, no way to seal off at night, the fire door couldn't be sealed and at that time everybody was scurrying trying to debug the whole building.

We had problems with the air conditioning and the security and everything else. The next thing I know, Mr.

McAward came in and told me that the security in the building was not good.

Of course I recognized Mr. McAward from prior to that. Mr. McAward then proceeded to make out a report about what his findings were with respect to the security of the building.

Again, I told him I had not authorized that. I think it was to the extent of some $4500 fee or $3500, or something like that, and that I would recommend he take it to Mr. Davis and get it approved because I would not approve it for payment.

So, those are the two times I think I met Mr. McAward.

Q Both incidents involved your rejection or refusal to cause payment of his bills?

A Yes.

Q What, if any discussions or reports did you have or make prior to April 26, 1973, concerning an executive search business as a Gulf and Western Profit Center or subsidiary?

A After we got the building all squared around, and I would say in along about 1971, after having gone through the hiring of Ed Kelly as the president of Consolidated Cigar, and Glen Wilson as the president of New Jersey Zinc and Jim

Spiegel, who was president of one of our major manufacturing divisions, we had spent a lot of money on executive search fees.

And, so, about that time Mr. Judelson was looking for a vice president of research and development. Now, along in that period of time, somewhere near just preceding, I'm not exactly sure I talked to Jim about this concern I had that we were really spending an abnormal amount of money for all the research work being done and I told him there were several companies where they were doing this themselves. I had had a conversation with people at Boydon, who had done a lot of work for us but Boydon was being taken over by Shareholders Corporation and several search firms were going in with other companies.

And, I said to Jim that it seemed to m e that we ought to be in a position on a higher level hirings to be able to do our own. The discussion I had, the reason I can be specific, because of the nature what we talked about. He said well, yes, that could make sense. Would that cause you any problem?

I said, well, you've got the one problem and that is that you may be making some direct contacts, but I said that could be worked around by establishing an in-house search company, and not identifying the corporation until such time

as the individual had indicated at least an interest in the corporation.

I remember there was another point that was brought up at that time, and I said to him, "There is only one caveat I will mention, Jim. To go into this thing, you have to be prepared, what if Jim Roach from General Motors calls up and says I understand you hired one of our vice presidents away, I said you know, in the old days they used to call that pirating but I guess now with search firms, if you are willing to pay 25 per cent, that solves, conscience and there is no such thing as pirating even though they do the same thing.

He said, I don't have any problem with that, if Roach called I'll tell him we have got a conglomerate. We have an idea that sounds like it has merit. We will try it on an experimental basis. If it works, fine, we will spin it out and off and make it a separate profit center and if it doesn't, we will use the ouside firms again.

I said fine. As long as you feel that way about it, I'll put it into play right away because you just asked me to find a vice president of research and development and we are going to find that fellow for you by doing it ourselves.

Fine. And, we did that. Now, also -- I'm trying

to keep the time frame here. When I was there at Gulf and Western in that new building, I did work with specific search firms. As I said Boydon would be one, Kenny, Bohn & Peck was another, Burke and O'Brien was another. They helped me on specific assignments, but everybody that was in that business at one time or another probably tried to come visit me to tell me who they were and what they could do.

Now, one fellow that came in to see me was a fellow by the name of Bill McCulloch, and Bill apparently had just formed an organization with another man.

I can't think of his name. It was a two-man operation. We got talking about philosophy and employment and what have you, and at that point, McCulloch said to me he chought --

MR. STEIN: Your Honor, I object to any statements made by Mr. McCulloch. I'm given to understand Mr. McCulloch would be a witness in this case.

THE WITNESS: I'll just refer to McCulloch and --

THE COURT: Go ahead and state it.

A The point is, McCulloch said to me "I think your idea is pretty progressive in trying to do something from within" and as I recall, he said let me kick this around a while. He came back to me and he had a proposal and I don't recall the details of that but it had something to do with

setting up a subsidiary company where Gulf and Western would have 51 per cent of it and he and others would be involved in it.

Now, I looked at that, at the time I had indicated the way the insurance got handled in the corporation, here was a proposed way of doing it and I thought that doesn't sound too bad.

But, we were at that time involved in trying to get a skills bank off the ground. We had been into some serious labor negotiation, my time was getting really tied up in a lot of things and by that time I hired a fellow by the name of Bill McDermott to come in and his job was to get this skills bank off the ground.

When I say skills bank, it's really a retrieval system for our own people to try to be sure that you knew how many accountants you had, how many controllers you had, how many of whatever particular group of person you were looking for and you could run through this quickly and pull out the right man for a job vacancy.

Now, in order to get at that skills bank, I wasn't interested in having every corporate -- when I say corporate president, I mean president of each of the subsidiary companies take all the time to send me dossiers of each of their men because this was time consuming. We had bought a

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McBee Cardex System and all we were doing at that point was as resumes would come in and be rejected by the various departments and so on, we would take them and put them into the system by categorizing them and what have you.

So, there was a lot of work involved in this, so I wasn't ready for any proposals by McCulloch or anybody other than to keep it in the back of my head.

I thought it sounded like a good idea. And I indicated I talked to Mr. Judelson about it. Well, those are the ones that come to mind now.

MR. STOLZAR: Your Honor, at this point, I would like to submit in evidence Plaintiff's Exhibit 3 heretofore marked, with particular emphasis I have marked by yellow sheet, a slip of paper the particular pages of that document which are of prime concern in this matter.

I would also like to submit in evidence Plaintiff's Exhibit 4 heretofore marked.

THE COURT: I will look at them later.

xx (Plaintiff's Exhibit 3 and 4 received in evidence.)

Q Mr. Lawlor, I show you Plaintiff's Exhibit 4 and ask you if that refreshes your recollection as to any other person with whom you might have discussed the in-house search idea?

A These are pages of a report that was developed

by --

THE COURT: Please, Mr. Lawlor, counsel asked you if that refreshes your recollection as to any other persons you may have discussed the in-house search idea?

THE WITNESS: Yes, sir, it does.

It reminded me I did talk to Dick Boester, who prepared these papers.

Q Would you tell us what your conversations were with Mr. Boester?

A I reviewed with Dick completely the fact -- he was director of personnel reporting to me -- I told him that we were in effect going to establish an in-house search company which would be used for the purpose of hiring people for the purpose of outplacing people from Gulf and Western.

Q Would you tell us what Exhibit 4 is?

A Exhibit 4 was an extract from a report that Mr. Boester put together to pinpoint the highlights of the department's activities so we would be prepared to submit it prior to a stockholder meeting so that the senior officers would be completely aware of what had been done and what was being done by us.

THE COURT: We will take a short recess.

(Recess.)

THE COURT: Proceed.

BY MR. STOLZAR:

Q Mr. Lawlor, did you have any discussions with Mr. Judelson concerning Plaintiff's Exhibit 3, the business plan, and employee relations, 1972, '73?

A Yes. This is a plan I submitted to them, to Mr. Judelson, Mr. Bluhdorn and Mr. Gaston, the three top officers of the company.

It's the business plan for the coming year, what you're going to do and how you're going to do it. They all received them in advance, read them and they provided you with an opportunity to come in and discuss them and I did have a meeting with all three about that.

Q Did you discuss that portion of the report relating to an in-house search group idea?

A Yes, it's set forth in the plan. We would have an in-house search group and handle outplacements as a result of that also.

We spent a good bit of that meeting talking about the overall employment problems within the company. Each one was aware that I was working on specific assignments of a very high level. I indicated to you that the Hollander -- the vice president of research and development, was the first one that we actually were in a position to do and handle all on our own.

When Mr. Hollander was brought into the company, and hired by Mr. Judelson and he and I sat down after that, I showed him how we had handled that thing from the beginning to the end, that there had been absolutely no cost to the company, other than phone calls and things of that kind, whereas had we gone to the outside and paid for that kind of search it would have been a pretty substantial amount of money.

We did discuss that. He seemed very pleased with that approach. Obviously I took that as total encouragement to continue doing what I was doing.

Then, the next thing he asked me for was for a vice president marketing.

I told him we were going to handle that in the same manner. As a matter of fact, it was good we did handle it in that manner because we had brought about three candidates to him all of whom he liked, they had been interviewed by other people in the company, but then it was determined to move someone up from within rather than go to the outside. Had we given that out to a search firm, we would have already paid that fee even though the man got moved up inside. At that time I commented to Mr. Judelson here is another example what this means to be able to facilitate this type of in-house search business.

Q Was there anybody else at Gulf and Western with whom you discussed the executive search business as a Gulf and Western profit center or subsidiary?

A I mentioned Boester, the personnel director. Hollander when he came on board, I told him exactly how we had done what we had done. I told him for really two reasons. One, he was going to be working for Mr. Judelson also and I thought that was good for him to know because he would have other requirements he would need filled but also I talked to him about it as a doublecheck to see if this in any way concerned him, the fact that he was hired vis-a-vis through us rather than through an outside search firm.

He thought that we had done a very credible job on a very high plane. He even commented that one of the people that we had to check out on him in terms of references was Mr. Eberly, who had been chairman or president of American Standards, who was an ambassador and Mr. Eberly wrote the way the thing was conducted was absolutely exemplary, was commendable.

He told us that. Bill McDermott was totally aware of what we were doing because Bill was working close with me. As I said, most of the searches that were given to me at that level, was not to be discussed with anybody and even in Dick Boester's area he was director of personnel, I took him into

my confidence on almost everything, but on some high-level assignments where I only wanted the least number of people to know, Bill would be the one who would be doing the work on it, he would know about it. I would know about it and either Judelson and Bluhdorn would know about it and the other people I took into my confidence in this whole area, because of an association had built up over several years was the person at Gulf and Western had assigned to me as tax counsel, and that was Dave Biondi. Dave Biondi handled specific things for me. He filled my income tax on a couple of occasions. He handled an audit, he happened to live further up from where I did in Connecticut, so on occasion he would drive down to work with me, which gave us a good chance to talk about some things.

And, I reviewed with Dave most everything I did from the standpoint that if there was anything that he, with his legal background, could give me advice on, I then didn't have to disclose that beyond that point.

So, it was very self contained as far as it went, but I had all the help I needed.

MR. STOLZAR: At this point, your Honor, I offer into evidence Plaintiff's Exhibits numbers 5, 6, 7 and 8 heretofore marked.

xx (Plaintiff's Exhibits 5, 6, 7 and 8, received

in evidence.

Q Mr. Lawlor, would you explain the exhibits 5, 6, 7 and 8, the requisites for checks for the purchase of a Post Office box and the receipt of the Post Office for a Post Office box in the name of Management Resources?

A Yes.

When we were making contact with people outside the company, we determined that it just didn't make sense for myself or Bill McDermott to call and say "My name is Matt Lawlor from Gulf and Western, and we see that you're a vice president of such and such, would you be interested in coming to work for Gulf and Western."

At that point, also, if we told somebody to write to us, it would just come through the regular Gulf and Western mail and I had no way of knowing -- I didn't know who it was being opened by at that point. If it was a confidential search, I didn't want other people to pick it up. So, at that point we went down to get a Post Office box, Bill McDermott went down to get a Post Office box, and the initial idea was to get the Post Office box and have it say, Gulf and Western address, 1059 Post Office Box, and the Post Office man said you couldn't have Gulf and Western -- you couldn't handle it that way, that the box would have to be representative of the way the information was being addressed, is what it was.

So, Management Resources is what the name was that we would use if someone called an individual, and so it was determined we would put Management Resources down as the name on the box. And then these receipts represent Dick Boester's getting the reimbursement for the payment of the Post Office Box fee, which was about $28, I guess. What he did, he made out a request for a check and then he paid them.

Q Was Management Resources the in-house search group that you had previously discussed setting up with Mr. Judelson?

A That's right.

Q Would you explain the origin of the Mark Group?

A Well, what happened here is that we were working on -- let's see, Management Resources went on through Hollander, working and the vice president of marketing, and some other assignments, vice president finance, that Mr. Bluhdorn was interested in, and we used it in connection with the hiring of Dick Wasserman, who had been with ITT and had been the head of the Levitt Company of ITT, and when he left, Bluhdorn indicated he wanted this man and I went after him and he came and came to work for us.

At one point we were looking for an applicant and when the name Management Resources came about, it was strictly a matter of looking in the telephone directory to see if there

was any such name and there was none, and it seemed to be a descriptive good name, so that's why we adopted it.

But, what happened was that someone responding to a telephone call that apparently Bill McDermott had made, either lost the address or lost the telephone number, I guess it was, and he looked it up in the Manhattan directory and ended up going --

MR. STEIN: Your Honor, could we find out who the "he" is?

THE COURT: It would help. Who is he?

THE WITNESS: It was a candidate who was being reviewed for a particular job. I don't know exactly what that would be.

It was just one of the ones we had worked on.

When I say candidate, I mean out of one person who gets hired, it may be 25 people you have had contact with or interviewed and what have you. It was one of those. What happened was, apparently he found an old Manhattan directory and in the old directory there was in fact a Management Resources and it gave him an address and that address is where he went to and when he went there, there was no such thing anymore.

Apparently they had a license to do business in the State of New York, but it was no longer around and it

wasn't in the new phone book, so no one paid any attention to it.

So in that point talking to Dave Biondi, I said this is not good to have this kind of thing happen, how can we check this out.

So, he suggested if we could find out if Management Resources was in fact in the State of New York or for that matter in the State of Connecticut, and he had Bill write to the authorities in each of those states and they found out in fact there was a Management Resources that had license to do business.

So we had to change the name. About that time we were starting to work on other assignments so the idea of a name was again important. We were working specifically on that top finance officer for the corporation.

So, the name Mark, I just happened to have a son by the name of Mark, and we were talking as to what name do you put on, I said let's put Mark for the time being. It seemed to be okay in terms of connoting the Mark Group would be an employment type of thing.

So, we did. As I say, I had discussed this completely with Dave as to the use of that name. That's --

THE COURT: Who is Dave?

THE WITNESS: Dave Biondi, your Honor.

MR. STOLZAR: The tax attorney employed by Gulf and Western.

Q Would you state the name of any person who Management Resources placed with Gulf and Western and the fees received by Management Resources for such placement?

A I think I hit that already. It would be Hollander was actually placed with Gulf and Western.

There were no fees whatsoever.

Wasserman came in at that time. There was no fee paid for Dick Wasserman. And the rest of them we were working on specific people. I told you that there would have been fees on the marketing person had we given it to the outside. We worked on that, had the candidates properly filtered but then there was a decision from within. No fees were paid in any of these instances.

Q Would you state the names of any of the persons whom the Mark Group placed in Gulf and Western and the fees received from or charged to Gulf and Western for such placements?

A Yes. Actually there were two placements which were made from the time the Mark Group came into being which would have been October of 1972. In that period there would have been -- there was a placement made with a firm in Stamford, Polymer Industries, which was a division of Phillip Morris.

Q Excuse me, the question was, the names of the persons whom the Mark Group placed with Gulf and Western and the fees received from or charged to Gulf and Western?

A I'm sorry, I misunderstood your question. The Mark Group placed no one with Gulf and Western and there were no fees paid.

Q Would you state what fees were actually received by the Mark Group and how and when they were earned.

MR. STOLZER: Before that is answered, may I submit in evidence Plaintiff's Exhibits 9 and 10 heretofore marked.

xx (Plaintiff's Exhibits 9 and 10 heretofore marked for identification, received in evidence.)

A The question was the people --

Q What fees were actually received by the Mark Group and how and when were they earned?

A There were two fees that were received by the Mark Group. One was for $9,000, as I recall, and that was for the placement of a person by the name of Tomlinson, I believe, with the Polymer Industries in Stamford, Connecticut.

They're a subsidiary of Phillip Morris. And there was another fee received, and I believe that was in the amount of $2700, and that was for the placement of David Biondi with Raybestos-Manhattan, in Connecticut.

Q What did the Mark Group do with these fees received by it?

A The 11,700 was placed in an account which had been opened in March of 1973, in I believe the Union Trust Company in Stamford. It had been opened in the name of the Mark Group with Bill McDermott as the authorized signatory. What happened was, I was in Pittsburgh at the time that both these people -- that the checks came in for both of these people, that's what it was. In talking to Bill, I told him to just take those checks and endorse them to the Mark Group and put it in the bank account, and that I would be discussing that further with Mr. Judelson later. But that's where it was to be kept for the time being. And he did.

Q Were any of these funds disbursed by the Mark Group?

A Yes. $3,000 for the placement of Tomlinson was paid to a Steven Markham. Steve Markham had really for the Mark Group acted as an outside contractor, as his true in search companies, where his total remuneration would be on the basis of receiving one-third of the first year's salary of the person placed.

So, after my leaving Gulf and Western and with that money in the bank account, and having owed that $3,000 to Steve, there was a disbursement to pay him that, so the

bank account is $11,700 less 3,000 to Markham and whatever the bank charges are over the period of time.

Q What happened to the approximately other $8,000?

A After I left Gulf and Western on the 23rd, I called Dave Biondi. I really frankly at that point didn't know where things stood. I didn't want that just sitting in a bank account. I asked him if there was some way until I could get this worked out with Gulf and Western, would he take that as an attorney, and I think he had what he called an attorney's account or something like that, and would he just hold that in trust for Gulf and Western and he told me he would, which he did.

I think the way it happened, Bill went down, drew the money out, gave it to Dave, and he in turn put it in his account.

When I talked to my attorney, Mr. Rudell, I told him that there was this 8,000 some odd dollars, and the first action Mr. Rudell took for me was to set up a meeting with Gulf and Western, to give them back the over $8,000, and they refused to accept it. We then drew the money out of the bank and gave it to Mr. Rudell to hold as trustee until we saw what we could do with the money.

Q What, if any personal gain or income, did you receive from the Mark Group or from Management Resources?

A I haven't received a nickel.

Q What, if any personal dealings, dealings for yourself did you have with any executive search group other than Management Resources or the Mark Group prior to April 26, 1973, and while you were in the employ of Gulf and Western?

MR. STOLZAR: At this point, your Honor, I would like to offer in evidence Plaintiff's Exhibit 11 heretofore marked, the contract with Bouche.

xx (Plaintiff's Exhibit 11 received in evidence.)

Q Let me break that question up into two, Mr. Lawlor.

Did you have any personal dealings, that is dealings for yourself personally, with any executive search group while you were in the employ of Gulf and Western?

A Well, if you are referring to Bouche, that would be the only personal contact that I would have had. As I said at the outset, I had contact with all kinds of search people. The only personal dealings I would have had would have been with Bob Bouche of Pittsburgh.

Q Would you describe this personal dealing with Robert Bouche in Pittsburgh?

A Yes. I believe it was about the end of December, the end of '71 or early '72, Mr. Bouche who has an employment and a search firm in Pittsburgh, where I had spent some 17

years in the steel industry, contacted me and told me that he was having some very serious problems with his firm.

This was a particular time when the economy was way down and employment was not very high, and they were struggling just to keep their head above water.

As a matter of fact, apparently they had gotten to a position whether either the banks or someone could very well foreclose and that would be the end of the business.

I knew of him for over 20 years, and his point to me was merely, Matt, if you are in any kind of position at all, would you consider making a loan to this company so that we could keep our head above water?

MR. STEIN: Your Honor, I am going to object to the statements contributed to Mr. Bouche on hearsay ground.

THE COURT: I will take it again. Overruled.

A (Continuing). I told Bob -- that was a telephone call, as I recall, and I said, "Let me take a look at my financial position" where I stood and what have you, and then I thought the best thing to do would be to have Mr. Bouche come up to Connecticut and visit me at my home, which he did. What I did is, I had mentioned earlier that Gulf and Western had given me 5,000 warrants which at that time, I believe I had sold a thousand of them, but there were 4,000 left and those 4,000 had a value of about $15,000, so there were $60,000

just give you a layman's idea what the agreement is.

The agreement, the intent and what have you, was an understand.ng that I was willing to give them $25,000, they would continue to pay the interest, and the other thing was, in case anything went wrong, my wife and child would be protected so that I could not come out on the short end of that.

That was the total sum and substance of what that agreement was all about. And, we concluded the agreement that night at my house.

Q Who prepared and negotiated the agreement itself?

A Dave Biondi did that.

Q What were your instructions to Mr. Biondi with respect to the preparation and negotiation of the agreement?

A Well, there had been a good deal of discussion with the four, five of us sitting in. My wife was there too. We discussed the state of the business, the problems they were having and so on, and the need for the money and on my part the fact that with the warrants I certainly would be in a position to do something about it.

And, at that point then, I told Dave that I was perfectly willing to loan the money, I had no reservations about that whatsoever because I had every belief that this was only an interim thing with Bob, that I did want some

protection, as I indicated, in case anything went wrong. I think there was such a thing as a life insurance policy on Mr. Bouche if he should die, because a search firm is pretty independent on the individual in the firm, it isn't just something you hand down to other people, and the only other point I know that came up in the discussion, I said that under no circumstances was there to be anything which could in any way be construed as a conflict of interest in any way, shape or form.

On that note Dave suggested that I sit in the other room --

MR. STEIN: Your Honor, I will object to statements made by Mr. Biondi.

THE COURT: I am afraid we are going awfully far afield, Mr. Stolzar. Can't you set out the material facts out of this long tail here. We have spent most of the entire morning and so far I haven't gotten anything of any consequence, to be perfectly frank with you.

MR. STOLZAR: I think it will fit into place before the day is out, sir.

THE COURT: Maybe it will.

MR. STOLZAR: And after --

THE COURT: It seems to me we are not making very much progress here.

Q Where did you obtain the funds for your loan to Bouche?

A I obtained it from the Chase Bank --

MR. STEIN: I object to the relevancy, your Honor.

THE COURT: Sustained.

MR. STOLZAR: Your Honor, I offer Plaintiff's Exhibits 12, 13 and 14 in evidence, heretofore marked.

xx (Plaintiff's Exhibits 12, 13 and 14 marked in evidence.)

Q Mr. Lawlor, what, if any profits, have you received from the Bouche agreement?

A I haven't received any profits from it.

Q Who or what is "Famous Music"?

A Famous Music was a music company wholly-owned by Gulf and Western, broken up into publishing and record production.

Q Did you attempt to obtain some arrangement for a Bigg Williams with Famous Music?

A Yes.

Q What, if any, was your relationship to Biff Williams?

A He was merely the son of a friend that we had met in Florida.

Q What income, if any, did you receive from your activities concerning Bigg Williams?

A Absolutely nothing.

Q Would you explain the motivation of your activities with respect to the following at the time of such activities:

Management Resources, the Mark Group, Biff Williams, Robert Bouche and Associates, briefly and succinctly.

A I think a good part of what I said this morning probably would explain the motivation but with respect to Management Resources, I was looking for a vehicle for Gulf and Western that would allow us to be extremely effective in the total employment area and cut down on the amount of search fees that we were paying out.

When it got to the Mark Group it extended somewhat in that we recognized we had a capability of helping to make this a profit center, whis is something that I had mentioned to Mr. Judelson and was looking forward to being able to do, the motivation there being to provide the same things the Mark Group provided and to even be able to provide that type of service for other companies in similar need for candidates, which would be true in the case of the placement of Tomlinson or Biondi.

Biff Williams was a young, talented singer and

writer. I had introduced him to Famous Music and to Tony Martell, who was president --

MR. STEIN: Your Honor, I will object at this point. I don't see the relevance of who Bigg Williams was.

THE COURT: Sustained.

Q Mr. Lawlor, what steps, if any, did you take to conceal from Gulf and Western in your activities relating to the Management Resources, the Mark Group, Biff Williams, Robert Bouche and Associates?

A I didn't take any steps to conceal anything. I conferred with -- excuse me.

MR. STOLZAR: Your Honor, I offer in evidence Plaintiff's Exhibit number 15 heretofore marked.

xx (Plaintiff's Exhibit 15 received in evidence.)

MR. STOLZAR: I offer in evidence Plaintiff's 16 heretofore marked.

xx (Plaintiff's Exhibit 16 received in evidence.)

Q Would you explain what Exhibit 16 represents or is, Mr. Lawlor?

A Exhibit 16 consists of two of the many pads that I used to kee on in my desk. In the course of the day as the day started, I would have them on my desk at work at Gulf and Western and would write down, on the first sheet if I was to talk to somebody, it might be listed there.

The other sheets I might have written down things I was thinking about, what I might do or how I might project something, some project I had in my mind. It merely constituted something that at a later date I could always go back and kind of find out what I hadn't taken care of. It's not a diary per se, but just -- I just normally write as I'm trying to verbalize my ideas.

Q These related to your work at Gulf and Western?

A Yes.

Q Who, if anyone at Gulf and Western ever requested or directed you to do any work or perform any services for anyone other than Gulf and Western?

A Mr. Judelson --

MR. STEIN: Your Honor, I will object. I don't see the relevancy.

THE COURT: Overruled.

A Mr. Judelson asked me to hire for him a superintendent, to find for him a superintendent for his father's business, which was over in New Jersey. I believe it's the Oscar O. Judelson Company, now, I think it has been changed to Judelson Industries. Mr. Judelson was chairman of the board of that company, and apparently the superintendent was leaving, and he asked me to go over and meet the people there and spend the time to get to know the company and come up with

qualified candidates for it which we did.

Q How much time did you spend performing such services?

A Well, I personally went over there on a couple -- three occasions that I'm aware of. I took a search fellow -- that was back in '69 -- I took a recruiter with me so he would understand what it was what I was looking for.

And, I had several meetings with Mr. Judelson reviewing the candidates that we offered to him finally and he finally hired him.

Then, subsequent to that, the man quit and we had to start all over again.

Q Was Oscar Judelson Company a part of Gulf and Western?

A No.

Q Was Gulf and Western ever compensated for your time or services?

A Not that I'm aware of.

Q What, if anything were you told concerning statements made by Judelson concerning you after April 26, 1973 and who told you?

MR. STEIN: Your Honor, I object. This is a case of libel that is alleged to have occurred on April 26, 1973. Statements made after that date bear no relevance to this case.

It didn't appear in the Gallagher Reports.

MR. STOLZAR: It will have some bearing on the malice question and the subsequent loss of earnings and so on.

THE COURT: Overruled.

MR. STEIN: Your Honor, I just might point out there is no allegation of malice in the first cause of action.

THE COURT: There is in the second.

MR. STEIN: That is concerning statements attributed to Davis, not Judelson.

THE COURT: We will take it for what bearing it may have on damages.

MR. STOLZAR: If your Honor please, if counsel is so concerned about the matter, an expression of malice in the first cause of action, I move the first cause of action be amended to allege malice.

MR. STEIN: Your Honor, I oppose the motion. In the midst of trial there is no time to make a motion --

THE COURT: It certainly seems to me you are a little tardy after you have had months in which to do it. I deny the motion.

MR. STOLZAR: If I may point out, your Honor, the matter of malice is reflected in the nature of the word

and the substance of the matter under the situation and there is ample text to indicate that an allegation of the word malice is not necessary under these circumstances.

THE COURT: I am aware of that. What you pleaded is what you pleaded. It is too late now. This isn't a broad case. It's a very narrow one. You have had months in which to make motions to amend. It would change the whole structure of the case. The briefs are all confined to what you allege in the complaint. The first thing you do this morning is expand it by stipulation what was said. That isn't what was said in the complaint at all. So, I have wasted last evening reading briefs directed to one subject which isn't what is here. Let's move along.

Q Would you describe the circumstances under which you signed a resignation from Gulf and Western?

A Yes.

On April 26, I was called -- I'm not sure whether it was a return of my call or I got called but I went up to the 42nd floor where Mr. Judelson's office is.

I was told by his secretary to remain in the waiting room because there was a meeting going on in Mr. Judelson's office.

I sat there for an extended period of time, over an hour. And, the next thing I know, she came in and said

Okay, fine, Mr. Judelson will see you now, but he doesn't want to see you in his office. See him in the conference room because there is something wrong with the air conditioning in his office.

I walked into the conference room and when I walked in, there was Mr. Judelson, Mr. Jones, Mr. McAward, and Mr. Davis. And Miss Werner was there and then left.

Mr. Judelson then said to me something to the effect that people that he had put confidence in me and people I had put confidence in, didn't seem to reciprocate, and then we went through a pretty lengthy meeting wherein he asked me about the Mark Group, which I told him. He asked me about Management Resources, which I told him, and without repeating the whole thing, Mr. Stolzar, it's fundamentally what we have in the transcript of that meeting.

MR. STOLZAR: Your Honor, I offer in evidence Plaintiff's Exhibit 17 heretofore marked, a transcript of the tape of the Lawlor interview of April 26, 1973, as supplied by Gulf and Western.

THE COURT: Received.

xx (Plaintiff's Exhibit 17 received in evidence.)

Q Mr. Lawlor, you have heard the words now part of paragraph 8 of the complaint read into the record.

Were those statements as made by Mr. Judelson

true?

A No, they were not.

Q Mr. Lawlor, what was the basis for your conclusion in the complaint as alleged that Davis made a statement to the Gallagher Presidents Report?

A Well, as I tried to indicate this morning, there were five people in that room. There was myself, Mr. McAward, Mr. Davis, Mr. Judelson and Mr. Jones.

Now, at the time we filled the complaint out, I recalled what to the best of my recollection had been said in that meeting and of course that has been substantiated by a transcript that I didn't even know was being taken at the time of that meeting.

The Gallagher Report, when it came out, and it talked about the various comments that were there, would seem to me the only way that could possibly get to the Gallagher Report would be from somebody from that meeting. I went back through in my mind and searched the various contacts I had with people and what have you, and based on some of the statements that I made earlier this morning, it was my opinion that Mr. Davis would have been the one who would have passed that information on to some outside source.

Q Did anybody at Gallagher Presidents Report further your thought that Davis was the man?

A After the publication of that --

MR. REINER: Objection, your Honor. No foundation has been made.

THE COURT: Sustained.

Q Did you have any meeting with any officer or employee of the Gallagher Presidents Report?

A Yes, I did. I met with Miss Billings, the editor and president.

Q Did you have any conversation with her concerning the source of the Gallagher Presidents Report story?

MR. REINER: Objection, your Honor. No proper foundation has been laid.

THE COURT: Sustained. Fix the time and place.

Q Will you tell us where and when you met with Miss Billings?

A It was subsequent to the printing of the Gallagher Report, which was May -- it would have been in June that the meeting took place, and it took place in a restaurant of the Hotel right next to Grand Central Station, the Biltmore, I believe it is.

The meeting was at her request. She had called me and asked me if I would consider coming down to New York to have a discussion with her about the contents of that article.

I came down, we talked about what I had done at Gulf and Western, she seemed to me that I had a good reputation. I remember asking her when did she determine that, before or after she wrote the article and she told me -- I think she declined to answer that.

But, the purpose of that point was, she said to get to know me better. She asked me to bring a copy of my resume with me because she indicated that she would like to send that out to the various people who subscribed to the Gallagher Report, which goes to the presidents of many, many large corporations.

She indicated that a source so high up in Gulf and Western told her that there should be no question in my mind who was the source of that article.

MR. REINER: I object, your Honor, and move to strike the testimony.

THE COURT: Denied.

MR. STEIN: Your Honor, the statements made by defendant Billings of course, are not binding or Gulf and Western.

MR. STOLZAR: At this point, your Honor, I offer in evidence Plaintiff's Exhibit 18 heretofore marked, the Gallagher Presidents Report of May 22, 1973.

The article in question is on page 2 of that

document.

THE COURT: Received.

xx (Plaintiff's Exhibit 18 received in evidence.)

Q Mr. Lawlor, how did the May 22nd, 1973 article concerning you in the Gallagher Presidents Report first come to your attention?

A It was by telephone. I was at home and I received telephone calls from prior business associates, people in the search industry, asking me if I had seen this article.

I told them no, I had not. Where I first saw a copy of it is, when I was in New York the following day, someone had gone and gotten a copy of the Gallagher Report and then gave me that copy. That was when I first became aware of the actual words.

Q Were you ever contacted prior to May 22nd, 1973 concerning the contents of the article and if so, by whom?

A No, I was not.

Q I show you the article, in Plaintiff's Exhibit 18 and ask that you point out or read the portions which you claim are not true.

A Well, the article starts of "Gulf and Western Industries chairman forced to oust Matthew Lawlor two weeks after discovery of questionable practices by Lawlor as V.P. Employee Relations."

That's not true.

"Lawlor in charge of G & W personnel department". That was true.

"..reportedly set up dummy corporation in Mark Group" not true. "opened bank account for dummy corporation," not true. "channelled unsolicited job resumes to the Mark Group". I don't really know what that means so I can't comment on the truth or not being true. "Extracted fees for placement of executives with Gulf and Western." Absolutely no way true. "Eliminates title", I don't know. "Turns over Lawlor duties to personnel director Dave Foreman." I do understand Dave Foreman came back after I left.

Q What steps, if any, did you take concerning finding employment after April 26, 1973 and after May 22nd, 1973?

MR. STEIN: Your Honor, if I may move here at this point, for a bifurcation of the issues in this case, finish liability and then go to the damages issues?

THE COURT: No, I don't think that would be a wise use of our time. Let's put the plaintiff's case in.

Go ahead.

A The question is what?

Q What steps, if any, did you take in finding employment after April 23 and May 22nd, 1973?

A I had a resume developed and printed. I obviously started paying very close attention to the New York Times and the Wall Street Journal and the otherpapers that have openings. However, for vice presidents of employee relation, there weren't that many. I did contact specifically Alan Sarn, Bill McCulloch, Jim O'Brien, Tom Denny, Mr. Christian. These are all men who I have known over the years who are in the search business.

I contacted many and was contacted. The phone practically was ringing continuously or constantly for a week after this occurred, of people who were calling and in each instance anyone in any position to be of help to me, for instance, Alan Kasalsky, Administrative Vice President of Black and Decker, he has submitted my name on several occasions, with respect to positions he knew to be open. With respect to Herb Hallbrecht, in Greenwich, I went to see him. He had his own firm. He told me that there was a position as vice president employer relations for Hart, Schaffner & Marks in Chicago. He submitted my resume to them. They seemed to be quite impressed with it. Then in turn he tried to contact Gulf and Western to find out something about why I was no longer there. He called them. He wrote to them. He got no response. Then in a meeting I had with Cynthia Billings, I mentioned that to her, she suggested if I had him write her

a letter she would take steps and do what she could.

He wrote her a letter and she never responded to the letter and subsequently Mr. Hallbrecht called and told me because they were not able to get any information whatsoever --

MR. STEIN: I will object to any statements, your Honor, made by Mr. Hallbrecht as hearsay.

THE COURT: Again, I will take it.

THE WITNESS: I apologize for hearsay, your Honor.

THE COURT: That's not your problem. That is your lawyer's problem, Mr. Lawlor.

A (Continuing) At any rate, the job at Hart Schaeffner & Marks was not made to me as a result of the article that was written and no substantiation or no denial from Gulf and Western and that dropped. I had an offer, a call from Leonard, who has his agency in Pittsburgh, very well known. He knew me from my association with the Steel industry and he asked me for my resume which I sent to him, and he told me he had given it to a president of a steel company, my credentials fit exactly what they were looking for.

The president had asked him to talk to Gulf and Western. He called them and he talked to Miss Warner, Mr. Judelson was on the phone, she told him to hold on. He held

on and she came back and said Mr. Judelson will not take the call. With that, Leonard told me there was nothing he could do to pursue this matter because no one was talking from Gulf and Western with respect to either the article or why I left the company. Allan Sarn indicated to me there were positions but he would be in no position to do anything about it until this whole question of my integrity had gotten cleared up.

Jim O'Brien, whom I had known for years and who is an outstanding man in the search business, told the same thing to me.

Chris Christian told me with this cloud hanging over my head --

MR. STEIN: Your Honor, this is virtually a litany of statements made by a variety of people made to Mr. Lawlor.

THE COURT: I am aware of that. I don't see any other way he can show efforts to get a job. Go ahead.

A In answer to the total question, Mr. Stolzar, I called and talkedto every search person I practically had had contact with and I had contact with the best all around the country.

Q Mr. Lawlor, have you since April 26th, 1973, been able to obtain employment of any kind similar to your Gulf and Western position?

A No. During that period of time I have been trying to work strictly as a contract-type recruiter, if you will, on the basis if I could find somebody and place him I will get a fee.

One of the jobs that was just about settled was one with a recruiting frim, and after the offer had been made and I had accepted it and was to become an officer of that corporation, the offer was then withdrawn because of the possibility or the lack of clarity from Gulf and Western or anybody else as to what happened with Gulf and Western. That was with Woodger Associates in New York.

I have been unemployed in effect since then.

MR. STOLZAR: Your Honor, may we take a five-minute break?

THE COURT: All right.

(Recess.)

MR. STOLZAR: Your Honor, I have no further questions of the plaintiff at this time.

xx CROSS EXAMINATION

BY MR. STEIN:

Q Mr. Lawlor, when you were employed by Gulf and Western in an executive capacity, were you familiar with its policy concerning confidentiality?

A I had read it, yes.

ACOA

Q I show you a document which has been previously marked Exhibit 15.

Do you recognize that document?

A I recognize it.

Q Would you open it to the first page, please.

Was that your executive policy manual?

A Yes, it was.

Q Are you also familiar with the Gulf and Western conflict of interest policy statement?

A I filled one out in 1969.

Q Did you read it at the time you filled it out?

A Yes, I did.

Q I show you a document which has been marked Defendant Gulf Exhibit 15A, for identification.

Is that the Gulf and Western Conflict of Interest Policy Statement?

A Yes, that was put in that book, yes.

MR. STEIN: Your Honor, I offer into evidence Exhibit 15, Gulf and Western Executive Policy Manual and the Conflict of Interest Statement as Exhibit 15A.

THE COURT: Received.

xx (Defendant Gulf Exhibit 15 and 15A received in evidence.)

Q Did the Gulf and Western conflict of interest

policy statement permit its executives to become stockholders of companies with whom Gulf and Western did business?

A Mr. Stein, I read that statement. I could not sit here and tell you of my own knowledge that I know exactly what's in that statement, no.

Q Will you look at the statement and see if it helps you answer my question.

A The question now.

THE COURT: You can put a leading question.

Q I direct your attention to paragraph 5.

Will you read that?

A "Employees shall not have a financial interest in suppliers, customers and competing companies or any enterprise to which financing accommodations are or may be extended by Gulf and Western which would affect or appear to affect their decisions or actions except when their financial interest is limited to less than one per cent of a publicly held company."

Q Did you have a financial interest in Robert J. Bouche and Associates, Inc?

A I loaned Bob $25,000.

Q Did you ever become a stockholder in Robert J. Bouche Associates, Inc.?

A I was issued a stock certificate.

Q You have a stock certificate from Robert J. Bouche and Associates, Inc.?

A Right.

Q Did Robert J. Bouche and Associates, Inc. ever do business with Gulf and Western while you were at Gulf and Western?

A Yes, they did, a minimal amount.

Q You have indicated on your direct examination thatyou loaned money to Robert J. Bouche and Associates?

A Yes, sir.

Q Did the Gulf and Western conflict of interest policy statement also include as one of its conditions that employees shall not borrow from or lend to customers or suppliers?

A It may well say that.

Q And you loaned money to Robert J. Bouche Associates?

THE COURT: He said he did. Next question.

A I did.

Q As vice president of employee relations did you have jurisdiction over the personnel department?

A Yes, I did.

Q Did your department receive resumes or applications from people outside Gulf and Western seeking positions

with Gulf and Western?

A Yes, we did.

Q So that if an applicant addressed an inquiry about a job to another executive, for example, Mr. Judelson the president or Mr. Forssen the treasurer, the matter would be referred to your department?

A In most instances if they didn't know what to do.

Q Did you or any of your staff ever have occasion to forward resumes received to William McDermott?

A Yes. I indicated before he was the person they were sent for, for classification.

THE COURT: Just answer the question. Let your lawyer bring out the explanation.

Q Mr. Lawlor, was Mr. McDermott from October '72 to April of '73 carrying on any activities for the Mark Group?

A Yes, he was.

Q To your knowledge, did McDermott ever make use of such resumes on behalf of the Mark Group?

A I don't know specifically if he did or not.

Q Do you recall the name Victor Karl?

A Not by --

Q I show you a letter dated February 22nd, 1973 from Victor A. Karl, addressed to yourself, Mr. Lawlor. It has been marked as Defendant Gulf and Western Exhibit 3.

Does that refresh your recollection?

A Yes. He wrote to me as vice president of Gulf and Western, right.

Q Is there a resume attached to Mr. Karl's letter?

A Yes, there is.

Q Was Mr. Karl's resume received in your department?

A February of '73, right.

Q And at the time Mr. Carl's resume was received, was anything done with it?

A I would have handled this the same I did with most resumes that came in.

If I didn't know anything directly I would have sent it over. It says "Bill, any interest. J. L."

Which I did sometimes and sometimes my secretary did it for me. This happens to me one -- I see my handwriting on there.

Q Mr. Lawlor, as part of Exhibit 3, I direct your attention to a letter on the letterhead of the Mark Group dated March 1, 1973.

A Yes.

Q Have you ever seen that letter before?

A No, not specifically.

Q Did Mr. McDermott work for you?

A Yes, he did.

Q Was Mr. McDermott carrying activities with the Mark Group?

A Yes.

Q Were you carrying on activities for the Mark Group?

A Yes.

Q Can you explain why a resume directed to you at Gulf and Western was sent out to Mr. Robert Thompson at Olin Corporation on letterhead of the Mark Group?

A Yes.

As I say, I still don't know what this was for or in what interest it was said, but at that time we were attempting to operate this Mark Group as a separate profit center for Gulf and Western and if there was no interest in this person whatsoever on the part of Gulf and Western, then Bill was at liberty to send it to someone. In this case Bob Thompson, who Bill knew and worked with at the Olin Corporation years ago and this is no different than just forwarding amongst several companies to see if there was any interest and they in turn would follow through with the man.

Q Mr. Lawlor, a letter was received by you from Mr. Victor A. Karl, dated February 2, 1973.

What did you do when you received that letter?

A I merely knew of no instance that -- it looks to me as though it's an employee relation person whom I didn't need on my staff and I sent it to Bill, which meant he would look to see if there was any interest in the company or put it in the file or if in this instance he saw an opportunity to forward it to another company, he would do it.

Bob Thompson forwarded many things to Bill or we to them.

Q Did you ever tell Mr. Judelson that you received a resume from Mr. Victor Karl in an application for a job for Gulf and Western and that resume was forwarded with a letter typed on the letterhead of the Mark Group to Olin Corporation?

A No, I would have no reason to tell that to Mr. Judelson.

Q Did you ever tell that to any of your superiors at Gulf and Western?

A I would have had no reason. As a matter of fact you are showing me --

Q Did you ever tell any of your superiors at Gulf and Western what you were doing concerning the resume?

A No, I didn't.

Q Do you recall any other occasions where resumes of applicants to Gulf and Western were first received by your

department and passed along to McDermott or to the Mark Group?

A There may have been other cases similar to Karl. Very definitely.

Q Do you recall any?

A No, not specifically.

Q Does the name Philip Kawesch refresh your recollection?

A No.

Q I show you Exhibit 4 and ask you if that refreshes your recollection?

A This is one of many resumes --

THE COURT: The question is does it refresh your recollection?

THE WITNESS: Not at all, sir.

THE COURT: That's it. Listen to the question.

THE WITNESS: Yes, sir.

Q Do you recall ever giving Mr. Kawesch's resume to Mr. McDermott?

A I didn't. It could have been sent to him. I indicated before my secretary would send these over.

Q To Mr. McDermott?

A To anybody in the department.

Q So that routinely if a resume came in with an application letter for a job at Gulf and Western, you would

give it to Mr. McDermott?

A No, sir, that's not what I said. I said I would have sent some over, my secretary could have sent some, some could have been sent to Bill. If I indicated there was no interest in the company or they could have been sent to Boester for further processing or whatever person in the employee relation department made sense.

Q Di you ever authorize Mr. McDermott to take any resumes or job applications and send them to Mr. Thompson at Olin Corporation?

A I don't believe Bill ever asked me for permission. If he sent it he did it on the basis of what he did here.

Q Did Mr. McDermott work for you?

A Yes, he did.

Q Do you recall Mr. McDermott ever sending a resume thatyou sent over to him out on Mark Group letterhead to any person outside Gulf and Western?

A Not of my own knowledge, no.

Q You don't recall the case of Victor Karl?

A No, I do not.

Q You don't recall the case of Philip Kawesch?

A No, I don't.

MR. STEIN: I offer previously marked Exhibit 3 and 4 in evidence.

These are Defendant Gulf and Western Exhibits 3 and 4.

THE COURT: REceived.

xx (Defendant Gulf and Western Exhibits 3 and 4 received in evidence.)

Q Can you fix the date when the Mark Group began its operations, Mr. Lawlor?

A I believe that the extension from Management Resources to Mark Group would have been about August of '72.

Q It carried on activities so far as you were aware, up until April 26, 1973?

A Yes.

Q Where were its offices?

A It's offices were at Gulf and Western on the 36th floor in New York City.

There was a telephone answering service in Stamford, Connecticut.

Q It had an office in New York at the Gulf and Western Building?

A Yes. It was in the personnel office of Gulf and Western.

Q Activities on behalf of the Mark Group were being carried on at the Gulf and Western offices in New York

City?

A Activities on behalf of Gulf and Western --

Q That's not my question, Mr. Lawlor. I'm talking about activities on behalf of the Mark Group.

A Yes, it would have been right there at Gulf and Western, yes.

Q Did the Mark Group employ the use of Gulf and Western Secretaries?

A Yes.

Q Did it employ the use of Gulf and Western printing department?

A Yes, sir.

Q Did it employ the use of any Gulf and Western personnel, any other Gulf and Western personnel?

A Whoever in the personnel department might have been necessary at a particular time, yes.

Q From time to time you called upon people in the personnel department to carry on the activities of the Mark Group?

A As far as I recall, yes.

Q Did the Mark Group have a bank account?

A Yes, he did.

Q Mr. Lawlor, I am going to show you Defendant Gulf and Western's trial exhibit 18, and Gulf and Western's trial

exhibit 18, which were heretofore marked.

Could you describe the bank account the Mark Group had giving the account number, the name of the bank, address of the bank?

A The Mark Group account number 1-07614805, Union Trust Company, Elm Street Office, Stamford, Connecticut.

There is another Mark Group account number 107551602, the same bank.

Q Was that account of the Mark Group opened on your instructions or request?

A Yes.

Q You live in Stamford, Connecticut, don't you, Mr. Lawlor?

A Yes, I do.

Q Did the document that has been marked as collective exhibit 17 constitute the record concerning the Mark Group bank account?

A 19?

Q Yes.

A As far as I know, I believe that's everything that would have been involved.

Q Who is the authorized signatory on the accounts?

A C. William McDermott.

Q Were any monies deposited in the Mark Group Bank

account by Mr. McDermott?

A Initially?

Q At any time?

A There was a $9,000 deposit and there was a $2700 deposit.

Q As of the end of April 1973, how much money had been deposited in the Mark Group bank account?

THE COURT: As I suggested a few moments ago, we would proceed much faster by putting leading questions.

Q Mr. Lawlor, isn't it a fact that as of the end of April, there were $11,689.50 in the bank account.

A Yes, sir.

Q Mr. Lawlor, can you describe the source --

THE COURT: Here we go. Will you lead.

Q Mr. Lawlor, did you testify on direct examination that the source of the bank account was $9,000 resulting from the Tomlinson placement and $2700 resulting from the placement of Biondi?

A Yes, I did.

Q Mr. Lawlor, isn't it a fact that that money was thereafter withdrawn by somebody, by a person?

A Yes.

Q And that person was Mr. Biondi, is that correct?

A It was withdrawn by Mr. McDermott.

Q Is it a fact that Mr. McDermott was acting on your instructions?

A Yes.

Q Can you explain why the money was withdrawn?

A That was after I left Gulf and Western, and I had testified that I had talked to Dave Biondi and suggested that I give it to him to hold on to until we found out what was going to happen here.

Q What did Mr. Biondi do with the $11,698?

A So far as I know, he put it in his own account, attorney-at-law account.

Q Did there come a time when the $11,698 was re-deposited at the Union Trust?

A Yes, sir.

Q Did there come a time when $3,000 of that money was paid out to Mr. Markham?

A June 21, 1973.

Q Isn't it a fact that as of June 1973, the money belonged to Gulf and Western?

A The money always belonged to Gulf and Western.

Q On whose authority in June of 1973 did you take it upon yourself no longer with the company, to pay Markham $3,000 of Gulf and Western's money?

A I did it on my own authority because I was the

one that agreed to pay it.

Q You made that agreement with Mr. Markham?

A Definitely.

Q You weren't authorized by Mr. Judelson to make an agreement, were you, Mr. Lawlor?

A When I was authorized to set up --

Q Were you authorized to pay Markham the money?

A Not specifically.

MR. RUDELL: I don't want to suggest. I suggest the witness be permitted to answer the question before he interrupts him.

THE COURT: He wasn't answring.

Q After the money was paid to Markham, what was done with the balance of $8,698.50?

A Turned over to my attorney.

THE COURT: We will take our luncheon recess.

MR. STEIN: I have two more questions, your Honor.

THE COURT: All right.

Q Who was your attorney?

A David Biondi -- I'm sorry, Richard Rudell.

Q Do you know where the money given to Mr. Rudell is at the present time?

A It's in a bank account, his bank account, yes.

THE COURT: All right, 2:15.)

(Recess for lunch.)

AFTERNOON SESSION

2:00 p.m.

M A T T H E W J. L A W L O R, resumed:

MR. STEIN: Your Honor, I neglected this morning to offer into evidence at the close of our examination Exhibit 18.

That is Gulf & Western Exhibit 18 and Gulf & Western Exhibit 19. The bank records.

THE COURT: Received in evidence.

(Defendant Gulf & Western Exhibits 18 and 19 received in evidence.)

CROSS-EXAMINATION (continued)

BY MR. STEIN:

Q Mr. Lawlor, I show you a copy of a document that has been marked Defendant Gulf & Western Exhibit 5 for identification, and I ask you, can you identify that document.

A Yes, I can.

Q Would you do so, please.

A This document came out of the notebook which was submitted this morning as a copy of some of the notes that I had been jotting down.

Q Is that your handwriting that appears on the document.

xx

A Yes, it is.

Q You made those notes?

A Yes, I did.

Q Would you look at the references in the lower part of the document to "Dick" next to No. 2 and No. 3?

A Yes.

Q Is the "Dick" referred to in the sentence "Dick leaves G &W, severance pay go to Mark Group Fund"; is that Dick Boester?

A That is right.

Q Is the sentence 3, "Dick takes draw and expenses"; is that also Dick Boester?

A That is right.

Q Can you explain those references?

A This is -- the references are just a part of this total page which represents a lot of thinking I was doing about ways that this Mark Group could be enhanced and act better than what we were doing up to that point.

Dick Boester, I had been told to fire him by Mr. Judelson and Mr. Bluhdorn and Mr. Gaston.

Dick is fifty something years old. I was concerned about where he was going to find another job. He and I talked about that. He was quite concerned. I felt Dick did a great job in the employment area for me. He had

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been very helpful.

I talked to Dick before he went on vacation, which he had already had planned before I was told to fire him.

Q Mr. Lawlor, were you the chief operating or the chief executive officer of the Mark Group?

A I was the Vice President of Personnel for Gulf & Western.

Q Were you the chief executive officer of the Mark Group?

A Well, there was never a chief executive officer discussion, no.

Q Wereyou in charge of the Mark Group?

A I would say in my capacity as Vice President of Gulf & Western, yes.

Q You were in charge of the Mark Group?

A Yes, sir.

Q And you offered Mr. Boester the presidency of the Mark Group?

A I wrote down on this piece of paper whether he'd be president-- I see I put that in parentheses. I was just saying to Dick, "Would you like to be the outside consultant working for the Mark Group?"

Q Did you offer Boester a job with the Mark Group?

A I didn't offer him a job because as such we did not

have a job. I didn't have any funds to offer him a job.

Q Did you offer him an opportunity to become associated with the Mark Group?

A Yes, I did. I suggested to him that that might be a way for him to go to the outside, start to do some of the work that Mr. Markham had done and eventually when this thing got recognized as a profit center under Gulf & Western, he would still then be a part of the whole company.

Q Mr. Lawlor, would you look on the chart towards the top where it says "MJL Enterprises"?

A Yes.

Q What is MJL Enterprises?

A MJL Enterprises is merely a caption which I have used in the past. It indicates, for instance, on income tax, where I tried to put specific things as they relate to expenditures that I had, put under MJL Enterprises, because it may have been anything in that particular year.

Q Who owned MJL Enterprises?

A There is no such thing as MJL Enterprises except in my -- it was a name I attributed to it.

Q Is MJL Enterprises a Gulf & Western company?

A There is no MJL Enterprises so it would not be a Gulf & Western company.

Q Would you explain why you have on your chart MJL Enterprises with an arrow leading from Mark Group to MJL Enterprises?

A What I was thinking about at the time I developed this was that we would be far enough down the road so Mr. Judelson would have agreed that by now we should be publicly known as a subsidiary of Gulf & Western.

I then would have hoped to have been president of this group, that is, chairman of the group, and run the whole show.

I would have found him a new vice president of employee relations to take my job, and that was a part of my thinking at that time.

My objective was to become a president of a subsidiary of some company of Gulf & Western and Mr. Judelson and I had talked about that in the past.

Q Was MJL Enterprises to be a subsidiary of Gulf & Western?

A If Gulf & Western and I, if Mr. Judelson and I --

Q Was it or wasn't it, Mr. Lawlor? Was it going to be a subsidiary of Gulf & Western?

It is a simple question.

A Those three initials are my initials.

Q I understand.

A This could be the XYZ Company for what this thing means here. It had no meaning except I put something in the box at that time for identification.

Q Mr. Lawlor, I am looking at a chart which shows MJL Enterprises on an organizational basis with an arrow which shows MJL Enterprises to Mark.

I am asking you if MJL was a part of Gulf & Western.

A It would be intended to be part of Gulf & Western.

Q Mr. Lawlor, do you recall testifying in a deposition in this case in May of 1974, where you were asked this question:

"Q Could you describe for me the other transactions during 1973 thatwere had by MJL Enterprises?

"A The only other transaction with respect to the three thousand would have been the interest payments by Bushee to me with respect to the loan that I made.

"Q Was that to you, Mr. Lawlor, was it to MJL Enterprises?

"A That was to me because I was MJL Enterprises."

Do you recall being asked those questions and giving those answers?

A Yes, I do, and I explained to you why, that for tax purposes, that $3,000 that came to me was purely to pay

the interest on that loan, and I had to show that for federal income tax purposes as to what it was and I put down MJL Enterprises so that there would be a basis for having that kind of a deduction on my income tax.

Q Who owned MJL Enterprises, you or Gulf & Western?

A In the sense that you just read from that transaction with Bushee, that was me.

In the sense that this is written down on this piece of paper, that is what could be with Gulf & Western.

This was -- this is nothing but some doodling, Mr. Stein, that I have-- I have done this and you can look through other parts of these records that have been submitted. There are many charts.

Q Mr. Lawlor, MJL Enterprises stands for Matthew J. Lawlor, does it not?

A That's right.

Q And you were MJL Enterprises, according to your deposition testimony?

A That is right.

Q Is that correct?

A That's exactly right.

Q Now on this chart, it shows MJL Enterprises under the Mark Group?

A No. It shows MJL Enterprises on the top of the

page.

Q Over the Mark Group. Excuse me.

A Right.

Q You don't see any inconsitency between your deposition testimony to the effect that you were MJL Enterprises and an organizational chart that you prepared that shows MJL Enterprises as being over the Mark Group?

A I don't see any because when Mr. Judelson and I would concur that this is the route we were going, he cold have called that MJL, he could have called it the XYZ Company.

Q Wasn't it a fact that MJL Enterprises was to own the Mark Group?

A No. Never. Never. No way. Not MJL, Matthew Lawlor's MJL Enterprises.

Q Would you please explain the chart where the Mark Group has an arrow leading from it where it appears underneath the MJL Enterprises?

A Explain the arrow leading?

Q Explain the references to the chart where you show that the Mark Group is under MJL Enterprises and the arrow is drawn from one company to the other.

A I was trying to indicate here - there is one arrow going up to a box called MJL Enterprises. The

understanding here is that there could have been lines started all the way across and would have to report to something which Gulf & Western would decide. This is the entity that will have all of this under it and at that point, I would have then put the three names that I normally put; Mr. Gaston, Mr. Judelson and Mr. Bluhdorn, as being the top box in that corporate structure.

Q And the entity that you refer to, Mr. Lawlor, that entity was MJL Enterprises, is that correct?

A On this particular page, yes. Yes.

Q So when you drew this chart, MJL Enterprises was your company, is that correct?

A When I drew the chart, I had used the term MJL Enterprises on my income tax; not with respect to what it means in this chart.

MR. STEIN: I offer the chart into evidence, your Honor. The chart is Gulf & Western Exhibit 5 in evidence.

xx

(Defendant Gulf & Western Exhibit 5 received in evidence.)

Q Mr. Lawlor, you testified this morning on direct examination that you attended a meeting on April 26, 1973, in the Gulf & Western building, at which Messrs. Judelson, Davis, Jones and McAward were present.

Do you recall your testimony?

A Yes.

Q Do you recall telling Mr. Judelson at that meeting that you offered the presidency of the Mark Group to Richard Boester, Gulf & Western's then personnel director, who reported to you?

A I'm not sure of the words. I know the transcript would have what I said, I am sure.

Q I show you a copy of the transcript.

I direct your attention to page 6 of the transcript.

MR. STEIN: That is Plaintiff's Exhibit 17, for the record.

A Yes, I discussed that with him, yes.

Q You told Mr. Judelson that you offered Boester the presidency of the Mark Group?

A I used the word "presidency" here and before I used the word-- in talking to Dick, I know I talked to him about working with the Mark Group, yes.

Q The question is, did you tell Mr. Judelson that you offered Mr. Boester the presidency of the Mark Group?

A If I see by the words here that I did say that.

Q On April 26, 1973, or before that time when the offer was made, did you consider yourself in authority to

offer Boester,a Gulf & Western employee, employment with another company known as the Mark Group?

A We are taking things out of time.

He was an amployee of Gulf & Western that I was told specifically to find other employment for, so I was not looking at Dick Boester as an employee of Gulf & Western at that time.

Q You were --

A This was-- if this were carried forward, it would havesaid, if -- I said up above here, that "You had discussed with me getting rid of Dick Boester, and at that time I talked to him about what might be done."

Q Getting rid of Dick Boester means getting him out of Gulf & Western where he then was?

A Out of the company, out of the job he then had.

Q By the way, Mr. Lawlor, was the Mark Group part of Gulf & Western's organization?

A As far as I know, yes.

Q So Mr. Judelson suggested to you that you get Mr. Boester out of Gulf & Western and you were going to get him out, weren't you, you were going to offer him the presidency of the Mark Group, is that correct?

A It is not correct, Mr. Stein.

Mr. Judelson and Mr. Bluhdorn and Mr. Gaston did

not want Mr. Boester in the position within Gulf & Western that he was in. And that was as director of personnel. And there were reasons that they gave that just were their own reasons really.

All I was trying to do was to have someone with his kind of background and talent be available,and once he showed that the thing would fly, he would have been readily accepted.

His concern was a question of how he related to other officers in the company.

Q Did you ever tell Mr. Judelson that the way you were responding to his request to get Boester out of the company was to offer him the presidency of the Mark Group, a company owned and operated by Gulf & Western, according to your testimony?

A Well, I think if you go back in the transcript, I certainly told Mr. Judelson right at the outset when he said would I explain to him what the Mark Group was.

I told him exactly what it was.

Q That is not my question.

A I am trying to answer it, Mr.Stein.

Q Mr. Lawlor, I asked you if you ever told Mr. Judelson that the way you were responding to his request to get Boester out of the Gulf & Western organization was

by offering him the presidency of the Mark Group, a company which you say was to be owned and operated by Gulf & Western?

Did you ever tell Mr. Judelson that?

A No, he and I never talked about that.

Q You didn't tell him that?

A No.

Q Do you recall Mr. Judelson asking you at the meeting on April 26th whether any moneys paid to Mr. Boester on his termination would be put into the Mark Group to help finance it?

A There was discussion about it, yes.

Q Do you recall that discussion?

A I'd have to refresh my memory but there was discussion. The question was asked because they had a copy of that paper from which apparently Jim was reading where I had made some notes on the bottom about severance.

Q Do you recall answering Judelson's question by saying, "I don't have any money to set up something like that, but it could be a good thing for you if you did it"?

Wasn't the "you" Mr. Boester?

A It could--

Q Was it or wasn't it?

A That I said it could be a good thing for him?

Q That's right.

A I remember saying that I thought-- I don't know about the words we are talking about right now but I know what I said to Dick is that "I have to let you go. You probably will get severance pay. If you don't find another job, there is this possibility to work with this group. However, I can't guarantee you any payment because I don't have anything to pay you with."

Q So you suggested to Mr. Boester that he take his severance pay and he invest it in the Mark Group?

A No, I did not. No, I did not. That's how it is being construed. All I talked -- and Dick in his testimony indicated that I never talked to him about investing his money in any group, but rather to try to figure out what it might take him to live for a year, and his severance would probably be - - because by this time, Mr. Stein, as the top personnel officer, anybody that left that company in an officer capacity was offered at least one year of severance.

And I told him he could live on that basis.

Q Mr. Lawlor, is it your testimony that you never suggested to Mr. Boester that it would be a good thing to have Mr. Boester invest his termination money in the Mark Group?

A Not that way, no, sir. I did not.

Q Would you look at page 7 of Plaintiff's Exhibit 17, the fourth line on the page; it starts out "That you"--

Do you see where I mean, Mr. Lawlor?

A Yes.

Q "That you" -- this is Mr. Judelson talking at the meeting of April 26th, 1973 -- "that you had in mind that when Boester terminated, the termination money would be put into Mark Group to help finance it and we would take a draw?"

Mr. Lawlor answered: "I said to him that if -- when he was terminated, if there was that money, yes, I did suggest" --

"Mr. Judelson: Did you say to him that his termination would be put in there?"

"Mr. Lawlor: No, I didn't say his termination. That's his money."

"Mr. Judelson: Right."

"Mr. Lawlor: But I said that Dick-- just a minute, all that I was trying to do was say that if this is the route you want to go, and you are terminated, then you've got two choices, either we will try to find you a job somewhere" ---

"Mr. Judelson: Right."

"Mr. Lawlor: --or, I don't have any money to set up something like that, but it could be a good thing for you if you did it. Therefore, if you'd consider putting that termination money in there, this would give you the, uh, what you needed until you got going."

"Mr. Judelson: You did tell that to Boester?"

"Mr. Lawlor: Sure."

A Those are the words, that's right.

Q Do you remember those words being spoken as between you and Mr. Judelson?

A I can read that they were said. I don't know the-- whether -- I saw a lot of places where I started to say something and he moved into an interruption, but it goes back to the same statement I made to you, that I was talking about --

Q Mr. Lawlor, I only asked you, did Mr. Judelson make those statements to you and did you give those responses to Mr. Judelson on April 26,1973?

A Mr. Judelson apparently made those statements to me. They are here on page 7.

Q Did you give those answers?

A And the response I gave is here in those words.

Q You admitted to Mr. Judelson at the meeting that you suggested to Boester that it would be "a good thing"

for Boester to invest his termination money in the Mark Group?

A Well, now we are into semantics.

Q Did you or didn't you?

A The words that you are using are not the words that -- is not the intent that I had.

Q I am only looking at the transcript, Plaintiff's Exhibit 17, that your counsel offered in evidence.

A I understand, Mr. Stein. I had no idea there was a transcript of this being made. I have no way of knowing.

Q That is not my question, Mr. Lawlor.

I am only asking you if you can recall stating to Mr. Judelson at that meeting that you suggested to Boester that it would "be a good thing" for Boester to invest his termination money in the Mark Group.

A The words I said, "Therefore, if you consider putting your termination money" --

THE COURT: Doesn't the transcript speak for itself? It is in evidence.

What do you want him to do, say it is wrong?

MR. STEIN: Your Honor, I appreciate that.

Q Would you explain why you asked Mr. Boester to make an investment in the Mark Group which was a wholly

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owned subsidiary of Gulf & Western according to your direct testimony?

A I would be glad to explain for the third time that I did not ask him to make an investment in that company. No way. These words, you have to remember I was sitting in a room full of people. I can't be sure of every word and how I phrased it, but Dick Boester -- and you have a deposition from him, and if need be, he would be a witness-- will tell you that I never talked to him about investment.

I talked --

MR. STEIN: Your Honor, I move that the witness' response be stricken as unresponsive to the question.

THE COURT: Yes, strike it out.

Q Mr. Lawlor, in April of 1973, were you satisfied with your position at Gulf & Western prior to the day you were terminated?

A Basically, yes.

Q Did you want to leave Gulf & Western at that time?

A Not for any specific reason, no.

Q Was it your intention as of April of 1973 to continue at Gulf & Western as Vice President of Employee Relations and to, among other things, oversee the

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operations of the Mark Group?

A Yes.

Q Mr. Lawlor, do you recognize the name Jerry Lestey?

A Yes.

Q Who is Jerry Lestey?

A That was a name that Bill McDermott would sign some letters to when he would send it to a company so there would be no identification with Gulf & Western.

Q McDermott would write a letter on the Mark Group letterhead, wouldn't he?

A That's right.

Q And Mr. Lestey did not exist, he was a fictitious character, wasn't he?

A Me. Lestey was merely a name that was used so that it would not --

Q He was a fictitious character?

A You could categorize him as that. There is no such person.

Q There is no such person.

Would you look at Exhibit 16, Defendant Gulf & Western Exhibit 16, letter dated April 9, 1973; that is a letter from Jerry Lestey to Theodore F. Brophy, the president of General Telephone & Electronics Corporation,

isn't it?

A Yes.

Q Do you recognize the letter, Mr. Lawlor?

A Yes.

Q Mr. Lawlor, at the time that that letter was written, were you a Vice President in charge of Labor Relations and Personnel at the corporate level of a major multi-diversified company?

A Yes, I was.

Q And had you recently been called to Washington to discuss an Under Secretary of Labor opening?

A Yes, I had.

Q And were you in your mid-forties with bachelor and master's degrees from prestigious colleges, happily married, the father of two children, and a veteran of the United States Marine Corps?

A Yes, I was.

Q Was not the biographic data set out in the Lestey letter your own biographic data?

A Yes, it was.

Q Would you agree that the person described in Exhibit 16 was seeking employment with General Telephone & Electronics in April of 1973?

A No, I would not.

Q You were not seeking employment?

A No, I was not.

Q Jerry Lestey was not writing a letter on your behalf to GT&E?

A He was writing a letter on behalf of the Mark Group to Mr. Brophy.

Q And theperson described in that letter of the Mark Group was some fictitious person and not Matthew J. Lawlor, is that correct?

A The person that was described in this letter is the person or type of person that would be able to fill a position that it was felt was very necessary for General Tel & Tel, and all we were doing -- all Bill did with this was to use my background to show him the type of person that we felt we could come up with to get him the right man for that job.

In the meantime, he found somebody from General Electric who fit that description beautifully.

Q You mean to tell me, Mr. Lawlor, that this letter to Mr. Brophy describing you was not an attempt to find out if Mr. Brophy was interested in hiring the person described in this letter for GT&E's company?

A We were trying to find out if Mr. Brophy was interested in hiring a person that could fit that

particular position because there was no such position at GT&E.

Q And that person described was you, Mr. Lawlor, wasn't it?

A The person that was used as the resume was me, yes, sir.

Q Mr. Lawlor, wasn't the Mark Group organized with a view towards its independence from Gulf & Western?

A Not while I had anything to do with it, no, sir.

Q It was not to be independent?

A No, sir.

Q Was it supposed to have its own stationery?

A Independent in the sense of independent operation.

Q Did the stationery say The Mark Group, a division of, or a subsidiary of?

A No, it did not. That would have destroyed the purpose of the Mark Group.

Q So that when a letter or a resume went out on a Mark Group letterhead, it didn't disclose that it was part of Gulf & Western, did it?

A Exactly right for that purpose.

Q You were planning to operate the Mark Group as a division or a subsidiary of Gulf & Western?

A That's exactly right. As we did with Management Resources.

Q Let me ask you this. If you planned to operate the Mark Group as a division of Gulf & Western, why were you seeking employment at GT & E through your subordinate, Mr. McDermott, alias Jerry Lestey, a fictitious person that never existed?

A I told you in the deposition and I told you again today I was not seeking employment with GT&E.

MR. STEIN: I offer Gulf & Western Exhibit 16 in evidence.

xx (Defendant Gulf & Western Exhibit 16 received in evidence.)

Q Mr. Lawlor, in your complaint in this case, the first cause of action, you allege that Martin S. Davis, Senior Vice President of Gulf & Western, stated to Cynthia A. Billings, a defendant in this case or other employees of Gallagher's, that you had extracted fees from Gulf & Western for placement of executives with Gulf and that such statement was defamatory.

Do you recall making that allegation in your complaint?

A Yes, I do.

Q Mr. Lawlor, do you recall testifying in this

case in May of 1974 where you testified that the reason you alleged that Davis gave this information to Gallagher's was because the only persons having information about what happened in the room on April 26, 1973, were Judelson, Jones, McAward, and Davis, and of those only Davis would have reason to be "vindictive" to you?

A I believe I said that, yes.

Q And you testified this morning about a whole incident about a man by the name of Judge.

A Right.

Q That was the basis of your allegation, was it not, that Davis was the person that gave the information to Gallagher's?

A That was one instance of trying to show vindictiveness, yes.

Q Mr. Lawlor, during your deposition, when you described the Judge incident for the first time, you recall that description that you gave me?

A As best I can. I tried to relate the whole story to you, yes.

Q I asked you at page 123 of your deposition this question, line 21:

"Q Do you have any other information or facts to support the claim that Mr. Davis went to Billings with

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information adverse about you?"

After your lawyer objected and there was some colloquy, I go on, and you say at page 126:

"Q You gave us an answer concerning the information that you have that it was Davis who went to Billings with information adverse concerning you, and I have asked you wnether in addition to this episode involving Mr. Judge, you know of any other reason that Mr. Davis would have to publish information that is adverse concerning you."

"A As far as specific,what do you call them, confrontations, is that the word, there were various times throughout the course of employment after Davis came up to Headquarters wherein he and I found ourselves on opposite sides of the fence."

A Right.

Q Do you recall giving that testimony?

A Yes, I do.

Q Now I ask you, Mr. Lawlor, what information do you have that Martin Davis ever went to Billings or any other Gallagher employee with information adverse about you?

A I believe in my complaint I stated it was my best belief, and I had stated it in the complaint or in the interrogatory, whichever was which, and went through

a process of elimination as to who was in that meeting and as to who would have reason to have gone to Billings as a result of any past run-ins with myself. And I think I went right through and eliminated some people, and then came to the conclusion that except for a Mr. McAward, that I didn't know where he fit into it, Mr. Davis certainly would be the one in the room who could do it.

Q Mr. Lawlor, you testified at length in your deposition about your belief. You testifed at length this morning on direct examination about your belief concerning how it must have been or why it might have been Mr. Davis, and I ask you right now, what information do you have that it was in fact Mr. Davis that went to Gallagher's with information adverse to you?

A I believe I said that when this case got further down the road and the Gallagher people were to present their sources, that this would then probably come out, and that was in that deposition, as I recall.

Q What information do you have now the case has gone forward, what information do you have now as you sit here on this day at this time in this courtroom that it was Davis that went to Gallagher with information adverse about you?

A Mr. Stein, I can only tell you that because of

the way that that was written in that Gallagher Report and what was in there and the people that were in that room, and then for me to go back and search my mind as to why anybody would be vindictive enough to do that, I can only tell you that I then had to go back over the various situations that occurred between Davis and myself, and I concluded that's the one that did it.

That is my basis for why I said that.

Q That is your sworn testimony; Davis did it.

A Yes, as far as I know.

Q And on what do you base that testimony, what facts?

A On all of the things that I have told you to date. I am not a soothsayer. I can't be sure of any --

Q The fact is you don't know whether it was Mr. Davis; you think it may be Mr. Davis, is that right?

A I allege it was Mr. Davis.

Q You have alleged it. Now support it, Mr.Lawlor. Was it or wasn't it?

A I have tried to support it by telling you the various reasons why I feel he did it plus the fact that Miss Billings told me it was someone so high up in Gulf & Western I could never miss who it was, and on that point there could only be someone that high up that would be that

vindictive would be Martin Davis.

Q And that is the basis for your allegation? Is that correct?

A I believe that is right, sir. Yes.

Q After the meeting with Judelson on the 26th of April, 1973, did you have occasion to relate what happened at that meeting, including the statements Judelson made to you?

A Did I relate any of this?

Q Did you discuss it with anybody?

A I think I mentioned to you that the night after that -- the night that that had occurred, I stopped by Bill McDermott's house, because I was concerned when I heard that he had been fired.

Q You told Mr. McDermott about what happened inside that room?

A I don't believe that I went into any great length. I believe I told you that Bill told me -- I asked him primarily what happened to him; and that's about the sense of it.

Q Did you have occasion to discuss what happened in that room on April 26, 1973, with McDermott?

A Not in its entirety, no.

Q Did you discuss any of the statements that

Judelson made to you on April 26, 1973, with McDermott?

A That Judelson made to me that day?

MR. STOLZAR: Can you fix a time?

Q Did you at any time after April 26, 1973, discuss with Mr. McDermott what Judelson said to you during the meeting?

A I believe that I had discussed with Bill about it, yes.

Q You did tell McDermott what Judelson said to you, didn't you?

A At some point later, yes.

Q You told him, didn't you?

A Right.

Q You told McDermott's wife, too, didn't you?

A No, I did not.

Q Was she there when you told McDermott?

A I believe my wife and Mrs. McDermott were out of the room when I was talking with Bill

Q You never discussed with McDermott what happened on April 26, 1973, what happened in front of your wife and Mr. McDermott's wife?

A Not to my knowledge, no.

Q Did you tell any otherpeople other than Mr. McDermott?

A I believe at some point in time I told Dave Biondi what had happened.

Q Who else?

A Just explaining what had happened.

Q Who else did you tell?

A As far as I know that's -- those are the ones I recall.

Q Did you ever tell Mr. Bushee?

A Did I tell him I was no longer with Gulf & Western?

Q Did you tell Mr. Bushee any of the statements that Judelson made to you on April 26, 1973?

A I don't know that I told him the statements that Mr. Judelson made. I told him about the fact that I was no longer with Gulf & Western.

Q You told him what happened in that room?

A Yes. Whether I referred to statements or not, I don't know.

Q All right.

So you told Mr. Biondi, you told Mr. Bushee, you told Mr. McDermott.

How about Gene Girden; did you tell him about it?

A Yes, I did.

Q Anybody else other than your lawyers in this case?

A Well, two of the people you are talking about, I talked to them in terms of them as lawyers. Girden and Biondi. I was at that point looking to determine what to do about this thing.

Q Mr. Lawlor, you claim in your complaint, as a result of Judelson's alleged statements at the April 26, 1973 meeting, you have been damaged in the sum of $2 million.

A Yes.

Q How did what Mr. Judelson said in that meeting room on April 26, 1973, as alleged in your complaint, lead you to conclude that you were damaged by $2 million?

A Mr. Stein, I can only tell you that in this period of time that I have been unable to find employment, and for whatever reason people are aware through the Gallagher Report, and also through some way of the getting from that meeting to the Gallagher Report, and also from the fact that there were statements made to employees throughout the building on the 27th, and what have you -- the 27th, which was the day after, to the vice presidents, which I believe was on the following Monday.

Q I am talking about the statements made in the meeting room, that is the subject of the alleged slander in this case, the statements that Mr. Judelson made to you in front of the other corporate officials and agents.

How did those statements lead you to conclude that you had been damaged by $2 million?

A It led me to conclude, and of course I can only look back, Mr. Stein, to April 26, 1973, and I know that from that point on, I have run into nothing but resistance or people parroting to me.

Q Mr. Lawlor, I udnerstand that and I heard your testimony this morning.

MR. STOLZAR: If your Honor please, I think the witness should be allowed to finish his answer.

THE COURT: Yes, I think so. Let him answer.

A And what I was trying to conclude and the basis for my comment there is that these statements that were made by Judelson in that meeting were not the truth, a d it was the basis apparently of some investigation.

I didn't realize what the full scope of that meeting was all about. He just almost refused to listen to anything I had to say. He had already made up his mind that everything was wrong, and on the basis of that, I concluded that when he then met with my people the next day and told them that I had been -- I had resigned, and Mr. McDermott had been terminated as a result of kickbacks, I put all this together, I can only conclude that this was done with some maliciousness, and then

once it went out to the general public, no one who has called Gulf & Western has been able to get any kind of a reference whatsoever,so I put that all together.

That's all I can conclude.

MR. STEIN: Your Honor, I respectfully move that the answer be stricken as non-responsive.

THE COURT: No, I think it is. I think your question, as most of them are, was wide open.

Q I am trying to find out, Mr. Lawlor, how Judelson's statement on April 26, 1973, led you to conclude that you had been damaged in the sum of $2 million?

A And I have given you my answer to that, Mr. Stein. I will embellish it if you wish.

Q In your ansewr, you referred to something that happened on April 27, 1973.

A The 26th, the 27th, and the meeting thereafter. This is all a part of one total picture.

Q So when you computed your damage of $2 million, you had in mind more than Judelson's statement on April 26, 1973?

A When I computed the $2 million claim, Mr. Stein, all I was thinking about is $100,000 a year executive, who had at least 20 more years of working life, who had an exemplary record up until that very moment in time, and

I found that I was unable to have people even when they read my resume and said, "You have what we want," come forward then because of this cloud hanging over me.

Yes, I concluded that could be $2 million.

Q And you concluded that Judelson's statement in that room on April 26, 1973 damaged you in the sum of $2 million?

A Yes, I do.

Q Can you tell me how you calculate the claim at $2 million?

A I think I took the-- I think I just did it for you in the past answer, didn't I?

THE COURT: No; in arithmetic. How do you calculate it?

THE WITNESS: I'm sorry, Judge.

I calculated the earnings that I was making, the potential earnings that I would have over the next 20 years, the fact that I had a 20-year working life ahead of me, and when you add that up, it seems to me it comes out pretty close to $2 million.

Q You mentioned in your testimony something to the effect of $100,000 a year for 20 years equals $2 million; is that correct?

A What does it add -- $100,000 --

Q Mr. Lawlor, 2X equals $2 million is $100,000, is that correct?

A Mr. Stein, I am trying to do some mental arithmetic up here. $100,000 in 20 years, okay, would be how much?

Q It is your complaint, Mr. Lawlor.

A Well, I sat down and calculated it with my attorneys.

THE COURT: Oh, come on. I can read and I can do arithmetic.

Q Mr. Lawlor, did you ever earn $100,000 a year?

A Pardon?

Q Did you ever earn a salary of $100,000 a year?

A I have been sitting here this morning and went over what amounts to about $100,000 for that last year.

Q You told me you got a salary of $60,000 in your last year at Gulf & Western, is that correct?

A That is correct, yes, sir.

Q Would you explain to me how you have a claim of $100,000 a year for 20 years if the most you ever earned from Gulf & Western was a salary of $60,000?

A That's not what I said this morning. I said that I had a base salary of $60,000. That I had all kinds of other embellishments, and when you add them all together,

and I didn't sit down this morning and try to - but if someone kept notes, I am sure they are all there with respect to the car, the apartment, the profit-sharing plan, the loss of all the options, and the insurance and the other benefits that I had, you figure that out. It comes up right about, I said, somewhere between $95,000 and $100,000, and there is an escalation for the next 20 years, too.

MR. STEIN: I have no further questions.

CROSS-EXAMINATION

BY MR. REINER:

Q Mr. Bluhdorn is the Chief Executive Officer of Gulf & Western, isn't he?

A Yes, he is.

Q He sets the policy for the company, doesn't he? He sets the policies generally of the company, isn't that correct?

A Yes.

Q And those policies are implemented by people thatwork under him, isn't that correct?

A That's right.

Q That being Mr. Judelson, Mr. Davis and other executives, isn't that right?

A Yes.

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Q And when he sets a policy such as a conflict-of-interest policy or it is promulgated under his approval, they implement it, isn't that correct?

A Probably that is correct, yes.

Q So if they take any action implementing a policy of his, they are doing it in his name and under his authority, isn't that right?

A I have no idea how much of this was discussed with Mr. Bluhdorn. I don't know.

Q I am asking you some general questions.

Would you please respond? When someone --

A In the normal course of corporate life, yes, sir, that is correct.

Q That is correct, isn't it?

A Right.

Q Right. So when someone says in a report that the Chairman of the Board was forced to oust Matthew Lawlor after discovery of questionable practices, that would be somebody that acted on behalf of the Chairman of the Board, right? Isn't that correct?

Do you understand what I am saying?

Withdraw the question.

Isn't it true then that when there is a report

that Gulf & Western Industries' Chairman was forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as VP,Public Relations, that that is an accurate statement concerning policies or actions taken on behalf of employees pursuant to authority and direction given by the Chairman of the Board; isn't that correct?

A With respect to your comment that it was the Chairman of the Board and anything that came out of this was a reflection of his carrying out of his policy?

Q Correct. Isn't that right?

A Well, I want to make sure I understand what I am saying yes or no to.

Q That is the question.

A That portion that relates to the Chairman and his relationship to other people in the company may well be true.

Q All right.

A Not the statement as I read it.

Q All right.

Now, at the time you had the meeting with Mr. Judelson on April 26th, weren't you accused of conflict of interest?

A Mr. Judelson used the word "gross" conflict of

interest. Yes.

Q Weren't you accused of other activities such as permitting this Biff Williams, that you testified to, of using the hotel rooms without the knowledge or consent of anyone higher than yourself in Gulf & Western?

A I was asked the question whether or not I had allowed him to use the room, yes.

Q Weren't you criticized for that?

A You mean did Mr. Judelson lecture on that?

Q Yes.

A I believe he did, yes.

Q And isn't that a questionable practice, in your mind?

A It was not at all in my mind or I never would have done it.

Q Weren't you accused of questionable practices by Mr. Judelson at that meeting? You were accused of questionable practices by Mr. Judelson, weren't you?

A Obviously I guess the purpose of that meeting-- I don't know what the purpose of the meeting was. I guess I was accused, yes.

Q At the time you were a vice president for employee relations?

A Yes, I testified to that.

Q All right.

So then this statement, the first sentence in the Gallagher Presidents Report "Gulf & Western Industries' Chairman forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as VP Employee Relations" is a true and accurate statement as to the reasons given for your discharge, isn't that correct?

A I would like to know who gave those reasons as to whether I would say they are true or not.

Q Didn't Mr. Judelson say you were being discharged for questionable practices?

A Did Mr. Judelson state to me, Mr. Reiner, or to whom?

Q To you, sir. To you, sir.

A What went out in that meeting I would not consider reading in a Gallagher Report.

Q Did Mr. Judelson say that you were being discharged because of questionable practices?

A No, he did not. No, he did not.

Q Did he say you were being discharged for a conflict of interest?

A No, he did not.

Q Those words were never used?

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A He mentioned conflict of interest to me, he mentioned many other things. He asked me questions about different things that occurred, which I think the transcript will show I tried to answer every one of them.

At one point I resigned then.

Q Now you have given some testimony concerning this Mark Group.

At any time prior to April 26, 1973, did you speak to Mr. Judelson about an entity called the Mark Group? Did you use those words to him?

A The Mark Group per se I did not use those words.

Q You did not?

A No, sir.

Q I show you a document that's been marked Defendant's Exhibit 28. It is on the letterhead of C.William McDermott, it is to Mr. John P. Lomenzo, Secretary of State of the State of New York.

Have you ever seen this document before and the attachments thereto?

A Yes, I have seen this.

Q Was this letter written by Mr. McDermott in his capacity as a member of the Mark Group?

A It was written in his capacity as a manager of manpower planning for the corporation.

Q Was he writing on behalf of the Mark Group?

A In that particular sense he was writing with respect to a question about the Mark Group, yes.

Q What was he inquiring about of the Secretary of State?

A As I indicated this morning, we had trouble with the word Management Resources and we found out that there was in fact in the State of New York and in the State of Connecticut a firm by the name of Management Resources that was incorporated.

Q Isn't it true he was writing to the Secretary of State to see about incorporating the Mark Group?

A No, it was not.

Q I draw your attention to the second page of this exhibit and I ask you again, wasn't Mr. McDermott writing to the Secretary of State concerning the incorporation of the Mark Group?

A He was writing to the Secretary of State to find out if there was such a name that was already incorporated under the laws of the State of New York.

MR. REINER: I offer this in evidence.

THE COURT: Received.

(Defendant Gallagher Presidents Report Exhibit 28 received in evidence.)

xx

Q I show you a document that's been marked Defendant's Exhibit 29 for identification on the letterhead of the Mark Group addressed to Mr. Frank H. Syer, President, California Time Petroleum, Inc., and signed by Steven C. Markham, and ask you, have you ever seen this before?

A I have never seen this letter before.

Q You have never seen that letter before?

A No. Let me see that --

Q Have you ever seen the second page?

A All right,now you have refreshed my recollection, I have --

Q Speak up so the judge can hear you.

A I have never seen these particular letters but I know exactly what they are all about.

Q In fact, did Mr. Markham refer to you as President of the Mark Group?

A In that letter it seems as though he did, yes.

Q When he was writing to Mr. Seyer, President of California Time Petroleum, Inc., he was referring to you as President of the Mark Group, is that correct?

A I believe that is right, yes.

MR. REINER: May that be received in evidence.

THE COURT: Received.

(Defendant Exhibit 79 received in evidence.)

xx Q Isn't it true that you held out the Mark Group to be a corporation? Isn't it true that people that worked for the Mark Group held it out to be a corporation?

A Not to my knowledge.

Q Isn't it true that people tried to mislead other people into thinking - strike that.

Isn't it true that people who were employed with the Mark Group tried to mislead other people into thinking it was a corporation?

A No, we never referred to it as a corporation at all.

Q You were referred to as the President, weren't you, of that Mark Group?

A It was a term that Steve apparently used in that letter, Mr. Reiner. I didn't instruct him on how to write the letter.

Q Can you tell me why the Mark Group's bank account was opened in your home town in Stamford rather than in New York City?

A Yes, very easily.

Q Why was it in Stamford where you make your residence rather than New York City where Gulf & Western has its offices?

A Because the Union Trust Bank on Elm Street is right there at the railroad station where Mr. McDermott caught the train to go to and from work. It was the most convenient place to put it. That was the whole point right there.

Q And was the bank account for the Mark Group opened in Connecticut so that no one in New York City would know of its existence with the banking authorities of New York?

A No, sir, never even thought about it.

Q Was there any sharing of a fee with a man named Zetlin for the placing of anyone who was an employee of Gulf & Western with an outside company?

A Yes, I testified this morning that Mr. Biondi was placed with Raybestos Manhattan.

Q And a fee went to Mr. Zetlin, isn't that right?

A Raybestos Manhattan, right.

Q For the placing of Mr. Biondi, is that right?

A That's right.

Q Mr. Biondi is the man who did the taxes for you, is that right?

A That's right.

Q Mr. Biondi was the man who took the money for you after you were discharged by Gulf & Western and held it in trust, isn't that right?

A That's right.

Q And you got a job for him, right?

A Lee Zetlin got a job for him.

Q Lee Zetlin got a job for him?

A Yes, sir.

Q And you paid him a fee, is that right?

A Who paid him a fee?

Q The Mark Group paid him a fee?

A It did not.

Q Shared that fee, did it not?

A The Mark Group,acting at my request after Mr. Ritthaller, who was Mr. Biondi's boss, told me to get rid of Mr. Biondi, in the way where it would be the least sensitive because of his conversant knowledge of all the tax matters of Gulf & Western, I started to let Mr. Biondi's name be known to any one of my acquaintances who would have any need for a tax man.

In this business, it is very common to have someone hired away rather than having a confrontation and that is exactly what was done here.

Q Did anyone senior to you in management at Gulf & Western authorize the payment of any money to Lee Zetlin for the placing of Mr. Biondi?

A No one paid any money to Mr. Zetlin for the

placing of Mr. Biondi.

Q A fee was shared, was it not?

A The fee was paid by Raybestos Manhattan to Mr. Zetlin. Mr. Zetlin--

Q What was the total fee that was paid?

MR. STOLZAR: If your Honor please, shouldn't the witness be allowed to answer?

THE COURT: Yes, I think so.

MR. REINER: Pardon me, your Honor.

A Mr. Reiner, let me explain that part for you, please.

Mr. Zetlin was a representative of a search firm in Connecticut. Okay? Mr. Zetlin did a great deal of work for Gulf & Western in their tax department. Okay? Mr. Zetlin was asked by Raybestos Manhattan to find for them a tax attorney.

Mr. Zetlin,somehow or other the information got back to me and it is probable when I was trying to find out where could a man with Dave's talents be used after I was told he was no longer to stay with Gulf & Western -- he had that assignment from Raybestos Manhattan. When we told Mr. Zetlin that we did have a person who was going to be leaving Gulf & Western, and that Gulf & Western was fully aware that he was going to be leaving Gulf &

Western, he then went to Raybestos-- went to Biondi, asked if it was okay for him to submit him as a candidate.

Mr. Biondi received a job.

Then Mr. Zetlin came back and said, "Look, in this business, if someone gives us a lead, we will share that fee," and at that point that would have put some money into the Mark Group,which enhanced my theory that we could have an in-house search company which could be a profit center.

I thought that was a great idea and he paid us. No one at Gulf & Western paid anybody.

Q. Mr. Zetlin gave you a check or someone on your behalf?

A Mr. Zetlin gave a check to the Mark Group.

Q Gave a check to the Mark Group?

A Right.

Q Does Gulf & Western have any bank accounts in New York City?

A Do they have bank accounts in New York City?

Q Do they have bank accounts in New York City, to your knowledge?

A Why, certainly.

Q Why was not that check deposited in the bank account of Gulf & Western?

A I have nothing to do with Gulf & Western's bank account any place.

Q You had something to do with the bank account for the Mark Group, didn't you?

A Because it was under my jurisdiction as a vice president of employee relations and I exercised my judgment to do that on a temporary basis and that's what I did.

Q All the companies you have worked for in your business experience and in all the period of time that you were at Gulf & Western, have you ever known of an instance where a bank account was opened without the knowledge of the treasurer's office or the controller's office of the company?

A That would be beyond my knowledge to answer that question.

Q I am asking you if you know of any instance where a bank account for a corporation was opened without the knowledge of the treasurer's office or the controller's office?

A I would have to say, to my knowledge, no, I don't know of any.

Q Did you inform anybody in the controller's office or the treasurer's office at Gulf & Western that a bank

account is being opened for the Mark Group?

A The bank account for the Mark Group was opened on the 3rd of March and from that point out--

Q Did you inform any --

A I am trying to answer you, Mr. Reiner.

From the 3rd of March until the 26th of April when I left that company, I did not have an opportunity to discuss that with anybody, and that was on my priority list, to talk to Mr. Judelson about it.

I put that money in there so I would know where it was and until we found out where we were going.

MR. REINER: Your Honor, I move to strike.

I asked a specific question, if this witness had informed anybody in the treasurer's office or the controller's office, and he did not respond.

THE COURT: Let me have the question.

(Question read.)

THE COURT: Answer the question yes or no.

A No.

Q At the time the payments were made to Mr. Markham, $3,000, did you request or receive any authorization from anyone in senior management at Gulf & Western to make that payment? Yes or no.

A No.

Q The answer is no?

A The answer is no.

Q Did you exercise dominion and control, then, over the property belonging to Gulf & Western without their consent or approval?

A No, sir.

Q Yes or no?

A I don't understand the question.

MR. REINER: Withdraw the question.

No further questions.

MR. STOLZAR: Your Honor, I have a couple of questions on redirect.

REDIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Lawlor, was there anybody in the Gulf & Western organization who was senior to you under whose jurisdiction all employee relations and employee business and executive search and executive placement, under whose realm that would fall? Anybody senior to you?

A That was my province. It was my job.

Q Did you run to the President or the Chairman of the Board with your day-to-day employee relations problems or questions or business?

A Mr. Stolzar, I testified this morning that I

saw the president very little. I was given a charter to handle that whole operation. I made decisions with respect to whether we would close down a factory or not in strikes. I made decisions whether we would make contributions of large denominations to charitable organizations or what have you.

I had no reason to run to him with everything. He wouldn't want me to be up there talking to him about everything.

I was told, and we discussed the whole philosophy of this and where it was going and where it could lead to.

I took that as my charter and went and did exactly what I thought was in my province.

Q When Mr. Stein was talking to you before lunch and showed you a book containing the Gulf & Western conflict of interest policy; how frequently was the conflict of interest policy considered or presented to the management people at Gulf & Western?

A The conflict of interest policy, the only questionnaire that I am aware of that I was ever asked to sign, was presented to me, I believe, in 1969, and this as a result of the fact that we were making a tender offer for Atlantic Richfield and the company was trying to get its house in order, and at that time is when I

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read the conflict of interest statement.

It was in a letter that was shown to me by Bill Flately who was the controller, and in that letter I recall it did state that we had to sign a questionnaire, and on the back: Did you do this or did you do that.

And it said on the front that if you filled out this form, and it would be done periodically, that if there was -- that anything on that form that was considered questionable would be referred to a committee of the board of directors at which time they would sit down with you and review it, and if they determined that it was in fact a conflict of interest, you would be advised of how to divest yourself of that.

That is the conflict of interest policy I recall. That book-- the manual that was submitted to me this morning probably came out of a bookcase that I had somewhere in my office down in 473 Madison Avenue. I don't believe I ever had it showing anywhere. That one happens to have my name in it because, as I mentioned,when we were at 437 Madison Avenue, we had a very small group of people. My name, Matthew Lawlor, Arnold Greenhut, or anyone else at that time would have had that kind of a manual handed to him.

When I was head of personnel for the whole compay,

I was not even consulted on half the personnel policies that were in there. That was done so that we would be in compliance, so that anybody, whether it be somone from the SEC or someone from the stockholder relations people that wanted to use it for whatever purpose, it was given out so it would be there.

That is the only recollection I have of that whole policy at all, and the one I did, which sticks in my mind is that that's a fair thing, at least if you are asked and if there is any question, it will be reviewed and you can make your determination.

No one would give up his job on something he did not know about.

Q In other words, this conflict of interest policy statement or questionnaire or whatever it was, was a one-shot deal ir 1969 and from thereon in, you have never been confronted with it?

A That is the only one I ever signed, Mr. Stolzar.

Q You were shown Defendant's Exhibit 16, a letter over the signature of Jerry Lestey, which contained your --

THE COURT: Biographical data.

Q What was the purpose of this letter?

A The purpose of that letter -- the date of that

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letter was --

THE COURT: What was the purpose of it?

THE WITNESS: Excuse me, I am trying to denote --

THE COURT: Think to yourself and see if you can answer the question.

Q Perhaps if I show him Exhibit 16.

A No, wait, I can recall. I can recall.

The purpose of that letter was, after a discussion that I had had with Bill McDermott, probably we were trying to ascertain whether or not we did have a viable vehicle, if you will, for solving problems for other companies as well as Gulf & Western, and we both were aware of the fact that GTE was moving to Stamford.

That's why it happened to be there and it did not -- because I knew some people there. I knew they had individual autonomy. There was no one controlling the whole thing, and for that purpose, we were expanding that concept with Mr. Brophy to see then if there was a possibility of helping him find someone to fill that slot.

Q In other words, this was not intended to place Matthew Lawlor but was intended to test the marketability? By marketability, I mean the marketable services of a Mark Lawlor? Is that right?

MR. STEIN: I object to the question.

THE COURT: Sustained.

MR. STOLZAR: I have no further questions of this witness.

MR. STEIN: No question on recross.

MR. REINER: No questions.

THE COURT: You are excused, Mr. Lawlor.

We will take a short recess.

(Recess.)

MR. STOLZAR: I call Mr. Jack Lawrence.

...

E V E R A R D E D W A R D L A W R E N C E,

called as a witness by plaintiff, having been first duly sworn, testified as follows

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Lawrence, what is your occupation?

A I am a management consultant and president of the small consulting firm known as Jack Lawrence & Company.

Q Do you know the plaintiff in this action, Matthew J. Lawlor?

A I do.

Q How long have you known Mr. Lawlor?

A Oh, since 1968.

Q In what capacity have you known Mr. Lawlor, socially,

business or --

A Well, business.

Q Mr. Lawrence, were you consulted by Matthew Lawlor after April 26, 1973, in connection with employment for Mr. Lawlor?

A No. I am rarely-- no, he did not approach me and ask me to find a job for him, if that is the nature of the question.

Q Did you have any discussions with Mr. Lawlor concerning his employment after April 26, 1973?

A On about that date, I remember calling him at his office and later at his home with the thought that he could be a prospective candidate for a position I had with one of my clients, and I did reach him at home, and was surprised to learn that he had left Gulf & Western.

Q Would you tell us the entire discussion you had, as best you remember it, Mr. Lawrence?

A Yes. I approached him as -- what we call, or a trade term -- as a prospect for a position of Director of Corporate Personnel and Industrial Relations for one of my client companies.

When I reached him on the telephone at home, I said I was glad to find him, and as I recall, I briefly described the problem I had, the position I was trying to

fill, and his response was that he had just left Gulf & Western, and would not be in a position at this time, even though he had left Gulf & Western, to look at another position.

I said, "Why not?"

And he said, "Well," he said, "the circumstances under which I left Gulf & Western are such that" -- I forget what his words might have been, but it indicated that there would be some controversy there, and so right away I withdrew and I do not believe that I talked to him about that position again.

Q Did you indicate in that conversation with Mr. Lawlor the salary involved in the job that you had in mind for him?

A I don't recall.

Q Can you tell us today what the salary would have been had he taken the job, if you know?

A Well, this is an educated guess. Base salary was on the order of $60,000, maybe $55,000. In addition to base salary, a car was provided as part of compensation. There would be stock options. I don't want to educate my guess to the number of shares, it is not important anyway, but the position had carried stock options and an incentive bonus of some sort, not a guaranteed bonus, but

there was a bonus in addition to base salary in connection with this position.

Q Did you indicate to Mr. Lawlor in that conversation that you would have a problem in placing Mr. Lawlor in this job because of the controversy, and further, possibly that he would not be placeable anywhere under the circumstances?

MR. STEIN: Objection, your Honor.

MR. REINER: Objection, your Honor.

THE COURT: Sustained

Q Did you discuss with him the potential of your future efforts on his behalf in connection with placing him?

A I met with Mr. Lawlor a week or two or three after my talking to him by telephone at his home.

We had luncheon together, and at that time he told me of this mini Watergate story, and I must have indicated to him at that time that-- I don't know if I indicated my problems in considering him but I certainly indicated what problems he might have in being considered for another position under the circumstances; but I did not --

Q Mr. Lawrence, do you consider yourself an expert in the executive search field?

A Yes, I do. I have been doing this work professionally for 26 years.

Q In your opinion as an expert in the field, can Matthew Lawlor be placed in employment similar to the position he held with Gulf & Western under the existing circumstances of the statements in the Gallagher Presidents Report and the statements made by Mr. Judelson in the meeting at Gulf & Western on April 26, 1973?

MR. REINER: Objection, your Honor.

MR. STEIN: I will object.

MR. REINER: Objection, your Honor.

Q As you understand them.

THE COURT: What is your basis?

MR. REINER: Your Honor, there has been no foundation laid as to what efforts were made, what he would base his judgment on, or his opinion. There is nothing before the Court right now that would let the Court make that judgment whether this witness can make such an expression of opinion.

THE COURT: I am afraid I don't understand your objection.

Are you objecting to his qualifications or to the question or what?

MR. REINER: As to the form of the question, yes,

mpb:mg 61 Lawrence-direct

your Honor, but more than that, I think to the qualifications of this witness to respond to that question, as to no foundation being laid for that question being presented to this witness at this time as an expert.

THE COURT: Overruled.

Have you read the transcript of what was said at that Gulf & Western meeting?

THE WITNESS: No, your Honor, I have not.

THE COURT: Well, sustained in that event.

Have you read the Gallagher Report?

THE WITNESS: No, your Honor, I have not.

THE COURT: Sustained.

I just assumed he came prepared to testify.

All right, let's put another witness on. He can do his homework some other time.

Let him read that and then you can answer the question.

THE WITNESS: How could I be supplied with this information?

THE COURT: The lawyers usually supply their witnesses ahead of time.

It is too much to ask these days.

THE WITNESS: I have been trapped, been unavailable. Sorry.

mpb:mg 62 Christian-direct

CHRISTOPHER M. CHRISTIAN,

called as a witness by the plaintiff, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Christian, what is your occupation?

A I am a consultant to management. I don't mean to correct Mr. Lawrence, but he seems to be a management consultant. I am putting it the other way around.

Q Do you do any other work at the present time?

A None whatever. None whatever, Mr. Stolzar,and for the last 13 or 14 years it's been the same.

THE COURT: Do I understand he has not done any work in 14 years?

THE WITNESS: I didn't hear what the judge -- pardon me.

THE COURT: I'm sorry. Read back the answer, please

(Answer read.)

THE COURT: Any other work. I'm sorry.

Q Mr. Christian, do you have any affiliation with any university or any college?

A Yes.

Q Would you please tell the Court what your affiliation is?

A I lecture on a regular basis to the faculty in the graduate business school at Columbia University.

Q And you do that currently?

A I do that, I have done that currently in the semesters.

Q Were you, when you were engaged in your regular occupation prior to 13 or 14 years ago, involved in the executive search field?

A Well, prior to that I was a manufacturer of food. I put 1890 French Dressing on the market. I was in the private sector for about 50 years. I introduced Caesar salad, dried soups and dried desserts.

Q We are interested here today, Mr. Christian, in your association and affiliation with the executive search field of placement.

A Yes.

Q Would you tell the Court what your experience is in that area?

A Oh, I have placed some top people in the market. I have an associate in Chicago by the name of Arne W. Greenman, who is a retired vice president of National Dairy, formerly or now Kraft Company, and we have worked together over the years. We have done quite well.

Q Do you know the plaintiff in this action,

mpb:mg 64 Christian-direct

Matthew J. Lawlor?

A I'm sorry?

Q Do you know the plaintiff in this action, Mr. Matthew J. Lawlor?

A Oh, I have known Mr. Lawlor from Madison Avenue, 437, could be about six, maybe seven years ago when he came up.

Q You are telling us that you knew him as associated with Gulf & Western, is that correct, sir?

A I knew him when he was the-- I don't know whether he was vice president then but I knew him, that he was the personnel director at that time. He later became vice president of personnel and labor,and moved up to the Gulf & Western building up on Columbus Circle.

Q Did you have any meetings or discussions with Mr. Lawlor subsequent to April 26,1973?

A Oh, I have had many discussions with him. I'd bring him from time to time some very decent people to inform on and Mr. Lawlor and I, I think, we had formed a very fine rapport over the years, and I always felt kindly toward him, in that respect.

Q Mr. Christian, would you tell us about any discussions that you had with Mr. Lawlor after April 26, 1973, concerning his employment or his means of livelihood?

A Well, the information came to me from one of the men that worked in his department that he was separated from the company. Upon further investigation, I found that he found it very difficult to get a position, and when I asked why, I was told that the company would not give him a -- would not give him a feedback or a recommendation.

Well, I took the position then that if Mr. Lawlor had committed a crime, he has to pay for it, but if he had committed no crime, I didn't think it was fair for a company like Gulf & Western to prohibit him from getting ajob, because it was very necessary in his position.

He was right near the top, he was making pretty good money.

MR. STEIN: Your Honor, I am going to object.

A And I decided then that I would enter the picture --

MR. STEIN: On the ground that it is opinion, the witness' opinion.

MR. REINER: I join in the objection.

THE COURT: Sustained. Strike it out.

Q Mr. Christian, did you take any steps to obtain a reference from Gulf & Western or information from

Gulf & Western concerning Mr. Lawlor, and if so, what steps did you take?

A Yes, sir, I did.

I wrote a letter along the lines to Mr. Judelson, the president, stating that I would like to have a recommendation or a feedback on Mr. Lawlor over the years, I said, knowing him from Madison Avenue. We had established a fine rapport and I would like to lend myself on his behalf to some of my clients.

I also assured him that anything that they said in that letter would be privileged and that since it was the axiom of our trade, I would not reveal whatever they had to say without their knowledge and permission.

Q Did you have a specific position for Mr. Lawlor in mind at that time?

A I had a tentative position. I had placed a man in one of the subsidiary companies of a $2 million organization, and I told him about this, and I said -- and he asked me to please get the resume on him and things of that kind.

And he said there might be something doing even in the parent company, so go to work on it.

Q Can you disclose the name of the company and the nature of the position that--

A Well, it wouldn't be fair. He's dead, though, so it is all right. He was the vice president of Sunshine Biscuits, who was a subsidiary of American Products, formerly known as American Tobacco Company.

Q Did you proceed with trying to place Mr. Lawlor in that position?

A I proceeded and I finally got a call from a Miss Warner who presented herself as -- over the telephone-- as the secretary to Mr. Judelson, and she very, very bluntly stated, "We will not give Mr. Lawlor a recommenda - tion."

Well, I said, "In that eventuality, would you please ask Mr. Judelson to put it in writing and send it to me?"

She said, "I will not."

Well, I said, "Miss Warner," I said, "this is the first time I have talked to you. Have I ever said anything to you to indicate that I was malicious about this? You are now telling me what Mr. Judelson said. I am merely asking you to have Mr. Judelson put it in writing."

She said, "I will not."

I said, "Then I will have to go to Mr. Bluhdorn."

She said, "He will tell you the same thing."

So I had to drop the matter, and I thought it was very impertinent on her part to take that position.

MR. STEIN: Your Honor, I move that the last statement be stricken.

THE COURT: Strike it out.

THE WITNESS: I don't understand. I don't hear what is going on, your Honor.

THE COURT: Don't worry about it.

THE WITNESS: That's all right.

Q Mr. Christian, did you proceed further with placing Mr. Lawlor at Sunshine Biscuit or their parent corporation, after you conversation with Miss Warner?

A No, Mr. Bleech told me at that time he couldn't touch him under the circumstances.

Q Did you proceed with any further attempts to assist Mr. Lawlor in obtaining employment?

A I am not sure about that. I have a lurking suspicion that I may have lost interest.

Q Was there a reason for your losing interest?

A On account of the fact that I couldn't get a feedback. You see, I am very meticulous about that. When I present a client to another, I tell my client precisely everything I know about the applicant. When I can't do that, I feel that I have lost it.

MR. STOLZAR: I have no further questions of this witness.

MR. STEIN: Just one or two questions.

CROSS-EXAMINATION

BY MR. STEIN:

Q Sir, I will try to keep my voice up.

A Surely.

Who are you sir?

THE WITNESS: Who is this gentleman?

THE COURT: He is the lawyer for Gulf & Western.

Q My name is Mr. Stein, sir.

A Mr. Stein? Yes.

Q Are you here, Mr. Christian, pursuant to a subpoena?

A No. I was not subpoenaed.

Q You were asked to come down and testify on Mr. Lawlor's behalf?

A I was called by Mr. Stolzar and that's why I am here.

Q And you know Mr. Lawlor for six or seven years, I believe you said?

A Yes, from when they were down at 437 Madison Avenue.

Q And have you been a friend of Mr. Lawlor's since

you have known him?

A Oh, not a friend. We have had a fine rapport but we never went out. Oh, yes, I think wehad dinner with him once when I had my associate from Chicago come in to meet him. I think I had dinner with him once with my wife and Mr.Brenmar.

MR. STEIN: Thank you, sir. I have no further questions.

MR. REINER: No questions, your Honor.

THE COURT: You are excused, Mr. Christian. Thank you very much.

(Witness excused.)

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E V E R A R D E D W A R D L A W R E N C E,

resumed:

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Lawrence, during the few minutes that Mr. Christian was on the witness stand, did you have an opportunity to read the May 22, 1973 Gallagher Presidents Report article concerning Mr. Lawlor?

A Yes, sir.

Q Did you also have an opportunity to read the statements excerpted from the transcript of the tape of

the Lawlor interview?

A I did.

Q I ask you again, in your opinion as an expert, can Matthew Lawlor obtain a position commensurate with his position at Gulf & Western in the light of the Gallagher Presidents Report article and the statements made by Mr. Judelson?

MR. REINER: Objection, your Honor. It is pure speculation at this point.

THE COURT: Overruled.

MR. REINER: This witness did not even read the reports before he came into this court and now he is going to express an opinion.

THE COURT: Overruled.

Go ahead.

A In my opinion, a man who does not have a perfectly clear record from his present or past employer has a great difficulty in finding another comparable position; it is a simple as that.

Now to go on, I would suppose that it is possible for a man to move into a comparable position but in my opinion, very unlikely, particularly through the auspices of a professional firm.

Q And by professional firm, you mean a professional

recruiting firm such as yours?

A Yes.

MR. STOLZAR: No further questions of this witness.

CROSS-EXAMINATION

BY MR. STEIN:

Q Mr.Lawrence, I gather you read a few moments ago the transcript, a partial transcript, of a discussion that was held, a document --

A Yes.

Q I am showing you a document, and I am asking you if that is what you read?

MR. STEIN: For the benefit of the record, I have just handed the witness a copy of a document, the content of which was stipulated to this morning as the statements made in the eighth paragraph of the complaint.

THE COURT: Does it have a number?

MR. STEIN: It does not have, your Honor, but I will give it one.

THE COURT: Give it a number so the record will be clear.

MR. STEIN: This document will be Defendant Gulf & Western Exhibit 32, and could we mark it for identification.

MR. REINER: Can we make it a joint defendants' exhibit, your Honor?

A Yes, that is the document I read.

xx (Defendant Exhibit 32 marked for identification.)

Q Now, did you know when you read the document, what DJ stood for, the initials DJ at the left part of the page?

A Mr. Judelson.

Q And do you know who was present at the time when the statements-- at the time when the statements were made in Defendant's 32?

A I know that Mr. Lawlor was present.

Q Do you know if anyone else was present?

A I am -- was told that there were others present.

Q Do you know who those others were?

A There was a senior vice president.

Q Yes?

A Of Gulf & Western there.

THE COURT: Is this material to his opinion?

MR. STEIN: Well, your Honor, he gave an opinion.

THE COURT: I heard what he did. I am asking you how what you are doing now is material.

MR. STEIN: Your Honor, I want to see that

the statements made in this document that were recorded in this document could not possibly have had anything to do with Mr. Lawlor's ability to find a job.

THE COURT: I thought that was your object, so I will sustain the objection.

MR. STEIN: I have no further questions.

THE COURT: It was not made but I will sustain it anyway.

CROSS-EXAMINATION

BY MR. REINER:

Q Sir, are you here pursuant to a subpoena?

A I beg your pardon?

Q Are you here pursuant to a subpoena?

A No.

Q Are you a personal friend of Mr. Lawlor?

A Business friend.

Q Did you speak with Mr. Lawlor prior to coming down here?

A Yes.

Q Did he explain to you the nature of this lawsuit?

A Yes.

Q Did you have discussions about what your testimony would be?

A No, not with Mr. Lawlor.

Q Did you have discussions with his attorneys?

Did you have discussions with his attorneys that are sitting at the table?

A Yes.

MR. REINER: No further questions.

MR. STOLZAR: I have no further questions of this witness, your Honor.

THE COURT: You are excused.

(Witness excused.)

...

W I L L I A M A. M c C U L L O C H, called as a witness by the plaintiff, was first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Would you state your occupation, Mr. McCulloch?

A I am in management recruiting executive search under the name of William McCulloch Associates, Inc.

Q How long have you been engaged in the business of executive recruiting?

A A total of approximately 15 years.

Q Do you know the plaintiff Matthew J. Lawlor?

A Yes, I do.

Q How did you come to know Mr. Lawlor?

A Through business. We have talked. I have tried to get business from him when he was at Gulf & Western, and we discussed possibilities of doing business together over a period of time.

I also discussed placing him at one time.

Q Let's start with the matter of your discussions of doing business with Mr. Lawlor.

What wasthe nature of those discussions?

A Well, of course, one would be with Gulf & Western as a client, but there was a period when I was leaving American Metal Climax where I was manager of manpower planning and management development, and considering going into partnership where I did discuss specifically with Mr. Lawlor the forming of a satellite company or something like that, which would serve Gulf & Western's needs and could serve other companies' needs, both in recruiting and in out-placement.

Q During those discussions with Mr. Lawlor about a satellite company for Gulf & Western, did Mr. Lawlor at any time express to you any intention or consideration that such satellite company would be his personal company?

MR. STEIN: Your Honor, I object to the question as leading.

THE COURT: Yes, it is leading, but I will allow

it.

Go ahead.

A No.

Q Throughout his discussions with you and your discussions with him, who was to be the owner or parent or principal of such proposed company?

A Gulf & Western.

Q Did you, during that period fo time, have a file on Lawlor or Gulf & Western or your discussions?

A I did.

MR. STOLZAR: Your Honor, at this point I offer in evidence Plaintiff's Exhibit No. 20 as heretofore marked.

MR. REINER: Your Honor, we haven't seen this document.

MR. STOLZAR: Mr. Reiner, your associate --

THE COURT: It is your opportunity to see it now.

MR. REINER: I'd like to see it, your Honor. Thank you.

THE COURT: Show it to them.

(Handed.)

MR. REINER: Sorry, your Honor, I have never seen this. I am just glancing through it very rapidly.

THE COURT: We will put it in subject to a motion to strike.

MR. REINER: Thank you, your Honor.

THE COURT: So we can roll along here.

Received subject to a motion to strike, on any ground other than its authenticity or its foundation as a business record.

MR. REINER: Yes, sir. I just have no idea what is in it.

THE COURT: All right.

xx (Plaintiff's Exhibit 20 received in evidence.)

Q For the record, Mr. McCulloch, can you identify Plaintiff's Exhibit No. 20?

A Yes, that's an envelope with some of my writing on it, and it refers to notes that I took either when talking with Mr. Lawlor or after talking to him, or discussing with him at home or discussing with my partner at that time with another firm, the possibility, the viability of setting up a satellite company, as I have described it.

Q And those notes were made during the time of these discussions with Mr. Lawlor?

A Right.

Q And this is your file, your personal file?

A This is my personal file.

Q Did your discussions with Mr. Lawlor concerning the satellite company ever come to fruition with you?

MR. REINER: Your Honor, may I object until I get a time frame of when these discussions took place and when this all happened?

THE COURT: Yes, it would help. It surely would help.

Q Would you tell us when these discussions were, Mr. McCulloch?

THE COURT: Who was there? What was said? When did they take place?

A Well, let's see, they took place by telephone and in Mr. Lawlor's offices with him, and my notes were written -- this would be in the time frame of the fall of 1971 to the spring of 1972, I would say; October to February or March, somewhere in that time frame.

Q Can you summarize for us what the discussions consisted of, the substance of the discussions with Mr. Lawlor?

MR. REINER: Your Honor, may I object again unless there is a foundation laid that there is a connection with the Mark Group and these discussions or this particular testimony.

If I understand, the Mark Group was not even in existence at this period of time.

THE COURT: Overruled.

I don't know what he is going to say any more than you do.

MR. REINER: All right, your Honor.

A Well, indicative of this is a letter --

THE COURT: No, please. Get the conversations and bring out what was said.

I don't see that this file is even admissible at this point unless you are using it as a past memory recorded or refresh his recollection or something else, but let's see what the witness can tell us that bears on this case, if somebody can find out what bears on this case.

I never in my life have listened to so much trivia.

Q Mr. McCulloch, can you tellus what your conversation was with Mr. Lawlor with respect to a Gulf & Western satellite corporation or company?

A We did have conversations concerning this matter, and I came up with draft proposals. I discussed these with him by phone.. I talked to him in his office.

THE COURT. I am sorry, sir, but I am not

clairvoyant. What were your conversations? What were you talking about? What matter?

A We were talking about setting up a satellite company under Gulf & Western. It would be a new, a different approach.

THE COURT: What did he say and what did you say?

A He was interested in doing a more effective, less costly way of recruiting for Gulf & Western, and using lots of resumes that come in to them, funneled in to another company, for placement outside to do a more effective job and to set up a profit center kind of operation.

And this, we had-- we discussed various aspects of this, whether it should be identified with Gulf & Western, whether it should be--

THE COURT: Do I understand you were trying to set up some kind of an employment agency on the side without all this esoteric terminology?

Is that what this comes to?

THE WITNESS: Yes, sir.

THE COURT: For Gulf & Western or for himself and for you and him or for what? Who were to be the principals of this thing?

THE WITNESS: The owner of this company would be

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Gulf & Western and they were going to provide the capital for it.

THE COURT: Did you talk with anyone other than Mr. Lawlor about this at Gulf & Western?

THE WITNESS: No, sir. At Gulf & Western?

THE COURT: Yes.

THE WITNESS: No, sir.

THE COURT: Anyone representing Gulf & Western other than Mr. Lawlor?

THE WITNESS: No, sir.

Q Mr. McCulloch, let me take you to a period of time subsequent to May 22, 1973.

Did there come a time when you saw or learned about the Gallagher Presidents Report article concerning Mr. Lawlor?

A I first heard about it on the telephone and I heard about it from a couple of sources, people who -- and I don't know who specifically they were. They would be people who were either employment agencies or executive search or in personnel departments of major companies.

"Did you hear about Matt?"

MR. STEIN: Your Honor, I move that the answer be stricken as not responsive.

MR. REINER: I join in that.

THE COURT: Sustained. Strike it out.

Q Mr. McCulloch, did there come a time when you learned of an article in the Gallagher Presidents Report concerning Matthew Lawlor?

A Yes.

Q Would you tell us the circumstances under which you learned of such report and when it was?

A In conversation with people on the phone, I heard that Matt Lawlor had been fired, let's say, and they said, "Have you seen it in the Gallagher Report?"

And I said, "No, that I had not," but I found a copy of this particular Gallagher Repoert and read it.

Q After you read the report, what did you do?

A I believe that I contacted Matt at home and probably called him and told him I was sorry to hear that it had happened.

Q And did you have any further discussion with Mr. Lawlor concerning the article or Mr. Lawlor's position?

A Well, I indicated that-- you know, with something as public as the Gallagher Report, that he was going to have a hell of a time finding an equivalent job.

Q Did you undertake to assist him in finding an equivalent job?

A No, I did not.

Q Was there any reason for it?

A He was not very commercial.

MR. STOLZAR: No further questions of this witness.

CROSS-EXAMINATION

BY MR. STEIN:

Q Mr. McCulloch, are you here pursuant to a subpoena?

A No, sir.

MR. STEIN: I have no other questions.

MR. REINER: No questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

...

D A V I D B I O N D I, called as a witness by the plaintiff, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Biondi, what is your occupation?

A I am an attorney.

Q Do you know the plaintiff Matthew J. Lawlor?

A Yes, I do.

Q Would you tell us how you first came to meet Mr. Lawlor?

A I was introduced to Mr. Lawlor by my previous boss, Mr. Ritthaller, who was a vice president of Gulf & Western.

Q How did Mr. Ritthaller come to introduce you to Mr. Lawlor?

A It was tax time, and Mr. Lawlor had been to the Gulf & Western tax office and he needed a body to prepare his tax return and I was a tax attorney with Gulf & Western.

Q Did Mr. Lawlor retain you personally to represent him in this tax matter?

A No, sir.

Q How did it come about that you were involved?

THE COURT: What difference does it make? What difference does it make? Let's get to the issues in this case.

Q Did you have an ongoing relationship with Mr.Lawlor as a Gulf & Western attorney?

THE COURT: They both worked at Gulf & Western. Now let's get to this transaction.

Q Did you have any discussions with Mr. Lawlor concerning the Management Resources or the Mark Group?

A Yes, I did.

Q Will you tell us the nature of these discussions?

A Mr. Lawlor, I had been doing Mr. Lawlor's taxes now, at that time, for about four years. I had done audits for him. I had represented him before the Internal Revenue Service.

MR. RUDELL: If your Honor please, could the witness be asked to speak a little louder?

A I represented him before the Internal Revenue Service.

THE COURT: No, strike the answer. It is not responsive. It is not material.

We will adjourn now until 2:15 tomorrow.

How many more witnesses do you have?

MR. STOLZAR: Your Honor, this will be my last witness.

MR. RUDELL: Today. And, if your Honor please, this witness is going to Venezuela.

THE COURT: All right, we will continue with it but see if we can get to something material.

MR. STOLZAR: I have asked him the question, and I will ask it again.

Q Would you please tell us what your discussions were with Mr. Lawlor concerning Management Resources and

the Mark Group?

A Mr. Lawlor told me he had set up an in-house search arm of Gulf & Western called Management Resources. This firm was to hire-in and hire-out employees for Gulf & Western. It was to be an arm of Gulf & Western.

THE COURT: Mr. Biondi, when did he tell you this?

THE WITNESS: This was in early 1972, sir.

THE COURT: Can you fix the month?

THE WITNESS: It would be hard.

THE COURT: Try.

THE WITNESS: I am trying to recall when I was transferred to the corporate office and I think it was late 1971. So it would have been around January 27th.

THE COURT: All right, go on. He told you he was going to set up this in-house group.

A He asked me if there were any tax considerations to consider and I said there were not, it would just be a division of Gulf & Western, and as such, covered by Gulf & Western, just an expense or a profit center.

Later on he came to me and he said they had hired -- they had interviewed a labor lawyer who was very upset at the fact that he went to a search firm and he found it was a part of a company, and he told me he had --

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because of that he had changed the name from Management Sources to Mark Group, to try to shield from the public the fact that this was a part of Gulf & Western. Outside of that, I --

THE COURT: Were you and he alone at these conversations?

THE WITNESS: Oh, no, they were open conversations. My secretary was there. Matt never made a secret of this group.

THE COURT: Did you keep any memoranda of these conversations?

THE WITNESS: No, sir.

A Then my last meeting with the Mark Group was when, as Matt testified, I was being nicely asked to leave and my boss, who was a vice president of the company, asked Matt to hire-- knowing Matt had this mechanism -- asked Matt to hire me out to another firm.

Matt put me in touch with Mr. -- put Mr. Zetlin in touch with me, who was also aware of this mechanism that Matt had, and we hit on a job.

THE COURT: Who was your boss?

THE WITNESS: Gerald Ritthaller. He was vice president of taxes.

THE COURT: You said, though, didn't you, that

you had left the tax arm and gone into the general counsel's office?

THE WITNESS: No, sir.

And it was Mr. Ritthaller who put me in touch with Mr. -- Mr. Lawlor to be hired out.

Q Did you know that you were being out-placed, that Gulf & Western would share in the placement fee for your--

A Yes, sir. Mr. Zetlin--

MR. STEIN: Your Honor, I object to that. There has been no evidence of Gulf & Western sharing any fees. The evidence is the Mark Group shared in fees.

THE COURT: I will sustain it. I think you are leading. Just ask him what the arrangement was.

Q What was the fee arrangement for --

THE COURT: As far as you know.

Q -- for your out-placement, if you know.

THE COURT: And who told you?

Q Who told you?

A I was told by Mr. Zetlin that Gulf & Western would receive a fee for my out-placement, that he would share a fee with Gulf & Western.

THE COURT: Who was Mr. Zetlin?

THE WITNESS: Mr. Zetlin was the man who was the principal of the placement company which out-placed me.

It was a company in Stamford, the name of which I don't recall.

THE COURT: Not connected in any way with Gulf & Western, this company?

THE WITNESS: No, sir.

THE COURT: Connected with this Mark Group?

THE WITNESS: No, sir.

Q Did there come a time, Mr.Biondi, when Mr. Lawlor advised you of his leaving Gulf & Western?

A Only to take over the presidency of the Mark Group if it grew as a profit center in Gulf & Western.

Q Mr. Biondi, listen to the question.

May we have the question read?

THE COURT: Yes.

(Question read.)

A After he left, he advised me, yes.

Q Did he ask you to do anything at that time or did he discuss doing something, your doing something at that time?

A Yes. Matt had collected some moneys for Gulf & Western which he asked me to hold until he could draft a letter or get it back to Gulf & Western, and I did so, and I held it in a special account in trust.

Q Did there come a time when you were consulted by

Mr. Lawlor concerning an arrangement that he wished to make with one Bushee, Robert Bushee or Robert Bushee Associates?

A Yes, Mr. Lawlor called me to his office to tell me that he wanted to make a loan of $25,000 to Bushee.

Q Did there come a time when you met me with Mr. Bushee, Mr. Lawlor, and other persons concerning this matter of a loan to Robert Bushee Associates?

A Yes, sir.

Q Did Mr. Lawlor give you any instructions concerning that arrangement?

A No, sir. Mr. Lawlor would have sat down and written a check to Mr. Bushee without collateral. Under the circumstances, I felt it was in the best interest of Mr. Lawlor to have the collateral.

Q Was there any discussion of Gulf & Western during the meetings or loan arrangements?

A Well, on the first meeting when Mr. Lawlor told me he wanted to make the loan, I inquired what relationship Bushee had with Gulf & Western and I was assured it was not a-- anything special, and that-- and then I told Mr. Lawlor, "Well, if you do make this loan, the prior relationship couldn't change because then it would look bad."

Q Did the matter of Gulf & Western's statement of policy concerning conflict of interest come into play at that time?

A No, sir.

Q By the way, are you familiar with that policy?

A I signed that policy once back in 1969, and I have never heard of it again.

Q Mr.Biondi, was it the policy of Gulf & Western to provide its executives and others with legal assistance from -- personal legal assistance from the lawyers of Gulf & Western?

MR. REINER: Objection to the form of the question.

A I can only answer that as to the tax department, and the answer is yes, to the higher-placed executives it was the policy.

MR. STOLZAR: I have no further questions of this witness at this time.

CROSS-EXAMINATION

BY MR. STEIN:

Q Mr. Biondi, did Mr. Lawlor ever offer you a position with the Mark Group?

A He offered me a position with Gulf & Western.

Q Did he ever offer you a position with the Mark

Group?

A If -- tentatively if it grew as a profit center, yes, he did.

Q What role did he ever discuss with you insofar as the Mark Group and you were concerned?

A It was very, very vague discussions. I think he mentioned that if it grew, I could possibly be general counsel.

Q Mr. Lawlor discussed with you your becoming general counsel to the Mark Group.

Did you understand the Mark Group to be a Gulf & Western company?

A Yes, I did.

Q When he offered you that position, did you ever question or concern yourself about jurisdiction or authority to offer that position to you?

A No, I didn't. Mr. Lawlor was a pretty powerful executive in the company, and he had a lot of authority.

Q Mr. Biondi, at the time Mr. Lawlor first discussed with you your taking a position as general counsel to the Mark Group, were you an employee of Gulf & Western?

A Yes, I was.

Q Did he ever offer you a position with the Mark Group subsequent to the time you terminated with Gulf &

Western?

A No, sir.

Q Were you terminated at Gulf & Western?

A I was asked to leave.

Q You were asked to leave the Gulf & Western organization?

A Well, now, I'm sorry, I was-- I must retract that. I was never asked to leave. I was told that perhaps Matt could find me a better job with more future. Very nicely done.

Q Isn't it a fact that your boss, Mr. Ritthaller, encouraged you to leave the employ of Gulf & Western?

A Yes, that is correct, sir.

Q By the way, did Mr. Lawlor ever mention to you the possibility of your employment with a company called MJL Enterprises?

A MJL Enterprises was merely a figment of Mr. Lawlor's imagination. It didn't exist.

Q Was the Mark Group to be a part of this MJL Enterprises?

A I don't know.

Q Was it or wasn't it?

A I don't know.

Q Mr. Biondi, you testified at a deposition in

this case on September 24, 1974; do you recall that?

A Yes, I do.

Q At page 53 of the transcript of your deposition I asked you these questions and you gave these answers:

"Q Was the Mark Group to be a part of MJL Enterprises?

"A Yes.

"Q Was the Mark Group also to be part of Gulf & Western?

"A Yes.

"Q Did you understand in your own mind how this could possibly be?

"A Of course, yes, it had been done before, the same set-up. It was not a new thing to Gulf & Western.

"Q Your understanding was the Mark Group was going to be a division of Gulf & Western, is that correct?

"A Yes.

"Q Was it also your understanding that the Mark Group was to have some relationship with MJL Enterprises?

"A Yes.

"Q You understood that the Mark Group was going to be a division of Gulf & Western and was going to be a division of MJL Enterprises?

"A Because MJL Enterprises would be a wholly owned

entity of Gulf & Western.

"Q This is how Mr. Lawlor explained it to you?

"A Yes."

Is that true?

A You are taking that out of context, I think. Prior to that, I said MJL Enterprises did not exist but if it existed, it could have been the parent company of this whole group of companies.

Q Mr. Biondi, I read to you verbatim the transcript of your testimony in this case.

Do you wish to change your testimony now?

A No, I do not.

Q Was your testimony correct when you gave it under oath on September 24th, one month ago?

A To the best of my knowledge, yes, it was.

THE COURT: Is what counsel read your complete testimony on that subject?

THE WITNESS: I am sorry, sir?

THE COURT: Was what counsel read to you your complete testimony on that subject?

THE WITNESS: I don't recall. I don't think it is, sir.

MR. STEIN: Your Honor, I suggest it might expedite it if I show the witness his testimony.

THE COURT: He said there was something earlier to the effect that he had told you that MJL Enterprises is an envisioned entity.

THE WITNESS: This is what I was --

MR. STEIN: Listen to the question.

THE COURT: I thought he said he had told you earrlier that MJL Enterprises was just an envisioned entity and had not come into existence, it existed on paper only, in the doodles of Mr. Lawlor.

MR. STEIN: And I asked him, your Honor:

"Q Was the Mark Group to be part of MJL Enterprises" --

THE COURT: I heard what you asked him but it didn't have that fact in it and that is what I asked him.

MR. STEIN: The Court has a question pending.

THE WITNESS: Sir, on the transcript, a couple of lines up there was a question concerning MJL Enterprises. My response to that was it was a figment of Mr. Lawlor's imagination.

The context of that testimony, if I recall correctly, was I was shown a chart with MJL Enterprises on the top, and-- or the Mark Group, various boxes, and I was being questioned about that.

THE COURT: I think that is now Exhibit 38.

Is that right, the number?

MR. STEIN: Your Honor, we are referring to Defendant's Exhibit 5.

THE COURT: It now has a different number.

MR. STEIN: I have it as 5.

THE COURT: All right.

Q Would you care to refer to the chart, Exhibit 5, Mr. Biondi.

THE COURT: How much longer do you think you are going to be?

MR. STEIN: Five minutes.

THE COURT: My day's work is over and so is everyone else's. I'm sorry, we are going to have to resume in the morning.

MR. STEIN: All right.

THE COURT: I have other matters.

THE WITNESS: Sir, I respectfully request --

THE COURT: I am sorry, but I have other people waiting in my chambers. I have set up appointments. I don't normally sit beyond 4:30. I have already extended a half hour.

MR. REINER: I have questions also.

MR. RUDELL: The witness told me he may be going to Venezuela tomorrow in connection with his work.

THE COURT: You should have thought about this

all day when I have been trying to speed you along a little bit.

I am sorry. I'd like to accommodate you, Mr. Biondi, but I represent the public. I have other commitments.

(Adjourned to Wednesday, October 23, 1974, at 2:15 p.m.)

MATTHEW J. LAWLOR

vs. 73 Civ. 5443

THE GALLAGHER PRESIDENTS REPORT INC., et al.

New York, October 23, 1974;
10.00 o'clock a.m.

(Trial continued.)

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D A V I D B I O N D I , having been previously sworn, resumed and testified further as follows:

MR. REINER: If your Honor please, there is a preliminary matter I would like to bring to the Court's attention.

Yesterday your Honor granted me the right to make a motion to strike the introduction of an exhibit that had been marked during Mr. McCulloch's testimony, and that had to do with laying a proper foundation. Your Honor permitted it subject to connection, and that did not take place in that testimony that was allowed, and I would like to now make that motion to strike, your Honor.

THE COURT: Plaintiff hasn't rested yet. He may still connect it.

MR. REINER: Thank you, your Honor. I will

reserve my motion.

CROSS EXAMINATION (Continued)

BY MR. STEIN:

Q Mr. Biondi, would you be good enough to look at Defendants' Exhibit 5.

Have you ever seen Exhibit 5 before, Mr. Biondi?

A Yes, sir, at the deposition.

Q When did you first see Exhibit 5?

A I believe it was at the deposition. I can't be sure.

Q Prior to your deposition, had you ever seen Exhibit 5?

A Not that I can recall.

Q Isn't it a fact that you testified at your deposition that you saw Exhibit 5 when you were helping Mr. Lawlor prepare his 1972 tax return?

A I believe I mentioned at that time I didn't recall whether I saw it then or if I saw it reading upside down across the desk.

Q Mr. Biondi, do you recall testifying at a deposition in this action?

A Yes, sir.

Q On September 24, 1974?

A Yes, sir.

Q Do you recall being asked these questions and giving these answers:

"Q Tell me when you first asw that document," which is Exhibit 5, "or a copy of it.

"A Gee, that's a difficult time to place. It was probably at the time of preparing his '72 tax return."

A That's correct.

Q Does that refresh your recollection?

A I was not sure at that time, and I am still not sure when I first saw this. You are asking me about a piece of paper I might have seen two years ago. I really don't recall. If I did, I'd tell you.

Q Mr. Biondi, do you recall me asking you at your deposition whether you had ever had a conversation with Mr. Lawlor concerning the document that is before you, Exhibit 5, and your answering:

"I don't believe I saw this exact one. I saw one that stated he was going to find another VP employee relations for Gulf & Western."

A That's right, yes.

Q Could you tell me when Mr. Lawlor told you that he was going to find another vice-president in charge of employee relations for Gulf & Western?

A He didn't tell me he was going to find another vice-president of employee relations. It was on a piece of paper like this, and that was if this Mark Group or whatever it's called grew to a point where he would become president of a subsidiary of Gulf & Western, and when he moved over as president of this subsidiary he would find a VP of employee relations.

Q Mr. Lawlor told you he was going to leave Gulf & Western?

A No, this was surmise from reading that piece of paper, which was like this but not the exact piece of paper.

Q Did Mr. Lawlor ever explain to you how he could have been looking for someone to fill the position of vice-president employee relations for Gulf & Western when he was the vice-president employee relations for Gulf & Western?

A I didn't say that.

Q Did Mr. Lawlor ever say that to you, Mr. Biondi?

A No. I surmised that when the Mark Group grew he would, according to what was written onthat piece of paper, he would take over this MJL Enterprise or the Mark Group or whatever it was called, and when he became president of that Gulf & Western subsidiary, he would then find a vice-president to fill his slot.

Q Which Gulf & Western subsidiary, MJL Enterprises or the Mark Group?

A Well, the Mark Group, as best -- to the best of my knowledge, was a name he gave to what could be. To the best of my knowledge it never existed.

Q That was the Mark Group?

A I am sorry, I said the Mark Group. I meant MJL Enterprises, MJL Enterprises, which the Mark Group would have been part of. I believe if you go through that deposition of mine, you will see that I also testified that he was going to put together an entire placement employee relations economic opportunity group, and he hoped to put that all together as part of Gulf & Western, and it was going to grow.

Q So that I understand you, Mr. Biondi, he was going to put together MJL Enterprises and the Mark Group?

A And various other employee related functions.

Q Mr. Biondi, you testified yesterday before we suspended on your direct examination that you advised Mr. Lawlor concerning a loan to Bushee Associates.

Do you recall that testimony?

A Yes, I do.

Q Did you advise Mr. Lawlor in that regard?

A Yes, I did.

Q Isn't it a fact that you advised Mr. Lawlor that he should refrain from lending any money to Mr. Bushee or Mr. Bushee's company?

A Yes, I did.

Q And yet Mr. Lawlor disregarded your advice and loaned Mr. Bushee $25,000 despite your reservations?

A That's the character of the man, yes.

Q The answer is yes?

A The answer is yes.

Q Did you ever indicate to Mr. Lawlor that you were concerned that there may be a conflict of interest stemming from this loan?

A I was concerned that it would look like some kind of a conflict.

Q Did you ever tell Mr. Lawlor that you were concerned that there might be a conflict of interest stemming from this loan?

A I don't believe I used those exact words, but words conveying the same meaning, yes.

Q When you advised Mr. Lawlor concerning the loan to Bushey, were you aware that there was a business relationship between Gulf & Western and Mr. Bushee's company?

A Yes, I was.

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Q Were you aware of such a relationship at the time Mr. Lawlor entered into a stock purchase agreement with Mr. Bushee and lent him $25,000?

A As to form, it was a loan agreement but -- yes, I was.

Q Mr. Biondi, you testified in direct examination, did you not, that you were employed by Gulf & Western's tax department?

A Yes.

Q And that you reported to a man by the name of Ritthaller, the head of the department?

A Yes.

Q Mr. Ritthaller assigned you all your work, didn't he?

A Most of it, yes.

Q Who assigned you your work in the tax department?

A Everyth ing was done under Mr. Ritthaller, yes.

Q Did Mr. Ritthaller ever assign you to do work for the Mark Group?

A No.

Q Mr. Lawlor assigned you all the Mark Group work, didn't he?

A Yes.

MR. STEIN: I have no further questions of this

witness.

CROSS EXAMINATION

BY MR. REINER:

Mr. Biondi, I believe yesterday you testified that MJL Enterprises was a figment of Mr. Lawlor's imagination; isn't that right?

A Yes, I did.

Q Do you still believe it's a figment of his imagination?

A I have no reason not to.

Q Did you prepare Mr. Lawlor's tax returns in 1972 and 1973?

A Yes.

Q I show you a copy of a document, Form 1040, 1973 return for Matthew J. and Donna J. Lawlor, and ask you, is this the tax form that you prepred for Mr. and Mrs. Lawlor?

A Yes, it is.

Q Look on the third page or the last page thereof.

A It's Schedule C with the name MJL.

Q Yes, the name MJL Enterprises, isn't it?

A That's right.

Q Is income reflected for MJL Enterprises?

A Certainly is.

Q Are there deductions reflected?

A Yes, there are.

Q How much are the deductions?

A $14,870.

Q Was it a figment of Mr. Lawlor's imagination to take business deductions under the name MJL Enterprises in 1973 of $14,000?

A It was a fictitious name.

Q Yes or no. Was it? Yes or no.

Was it a figment of his imagination to take those deductions as a business run by him?

A No, it wasn't.

Q Did you prepare this?

A Yes, I did.

Q You had knowledge at the time that he was taking this deduction of $14,000 as a business deduction for MJL Enterprises?

A Yes, sir, but I --

Q You are an attorney; is that right?

A Yes, sir.

Q You did it under the penalties of perjury; is that right?

A Yes, sir.

Q Was it true when you filled it out?

A Yes, sir.

Q Then MJL Enterprises is not a figment of anybody's imagination; it appeared on this tax return as a deduction for a business, didn't it?

A It's merely a fictitious name, that's all.

Q It says:

"Principal business activity, consultant, product services," correct?

A Sir, may I relate to you the --

Q Is that correct, sir?

A It's correct.

Q Does it say what the name of the business is?

A Consultant, and the name is MJL Enterprises.

Q That appeared upon a tax return which you prepared?

THE COURT: Yes, it appeared on his tax return. I have heard it 48 times.

MR. REINER: I am sorry, your Honor.

Q Did you also prepare tax returns for 1972?

A Yes, I did.

Q Were any deductions or any entries made thereon to Bushee as a subject --

THE COURT: Doesn't that speak for itself? What is on it is on it, and what isn't on it is not on it.

MR. REINER: Your Honor, I wasn't going to

introduce it. I was going to question from it.

THE COURT: It seems to me you are arguing with the witness, not cross-examining.

Q Isn't it a fact that in 1972 you prepared the form, and on Schedule E and R you listed Income from Bushee Associates as a sub-Chapter S corporation?

A I believe it was a loss.

Q Isn't that the role of a shareholder?

A Yes.

Q There came a time when you received this $11,000 and you put it into your account, you said, as an attornev; isn't that right?

A That's right.

Q At the time were you informed that this was money of Gulf & Western's?

A Yes, I was.

Q You made a check out for $3000, right?

A That's right.

Q You made it out to a Mr. Markham?

A That's right.

Q He wasn't an employee of Gulf & Western, was he?

A He was a contract --

Q Was he an employee of Gulf & Western?

A How do you define employee?

Q Was he an employee on the payroll of Gulf & Western?

A No, he was not.

Q Did you inquire of anyone at Gulf & Western whether that payment was authorized?

A Only Mr. Lawlor.

Q Was Mr. Lawlor employed by Gulf & Western at that time?

A No, he was not.

Q Did you inquire of anyone at Gulf & Western whether that payment of $3000 was authorized?

A No, I did not.

Q There was a balance of approximately $8900 in the account, correct?

A Yes.

Q Did you make a check out to Gulf & Western for that amount?

A No, I didn't.

Q At any time?

A I did not.

Q Did you turn that money over to Mr. Lawlor instead?

A I turned it over to Mr. Lawlor or Mr. Rudell. I don't recall.

Q Isn't it true you made a check out to Matthew J. Lawlor for the balance in that account?

A I believe that's right.

Q You made the check out to Lawlor, right?

A I think so, yes.

Q You didn't make it out to Gulf & Western?

A I did not.

MR. REINER: No further questions, your Honor.

I am sorry, your Honor, I don't believe the 1973 return has been received in evidence. I offer it in evidence.

THE COURT: Received.

MR. REINER: Defendants' Exhibit 33 for the 1973 return and Defendants' Exhibit 34 for the 1972 return.

(Defendants' Exhibits 33 and 34 were received in evidence.)

MR. REINER: Thank you, your Honor.

REDIRECT EXAMINATION

XX BY MR. STOLZAR:

Q Mr. Biondi, wasn't it customawry at Gulf & Western for the lawyers in your department to be assigned to work with officers of Gulf & Western on their personal matters?

A Yes, it was.

MR. STEIN: I object to the question as leading.

THE COURT: It is also repetitive. We had that yesterday. He told us they did the annual officers' personal matters. It was done with the consent of the company. Mr. Ritthaller permitted it. We don't need it all over again, I don't think.

Q When you prepared the tax returns that are now in evidence, was it your advice to Mr. Lawlor that he collate his expenditures under some business name or some name that indicated a business so that it could be set forth in a Schedule C?

MR. REINER: Your Honor, I object.

MR. STEIN: I object to the question on the ground it's leading.

THE COURT: Sustained on the ground it's leading, yes.

Q Who advised Mr. Lawlor on the setup of his tax returns?

A I did.

Q What was your advice with respect to the handling of expenses of, for example the enterainment group, his business investments, and that sort of thing?

A You have to break that down in two groups.

MR. STEIN: Your Honor, counsel is leading the

witness.

THE COURT: Overruled.

A You have to break that down in two groups.

In 1972 Mr. Lawlor was employed by Gulf & Western.

In 1973 for the most part of that year he was self-employed. The great bulk of the $11,800 expenses were incurred in 1973, at which time Mr. Lawlor was not employed by Gulf & Western but employed by himself.

Every expense Mr. Lawlor took on the tax return was verified by chits and checks and diaries.

In 1972 Mr. Lawlor incurred some unreimbursed business expenses. We used the fictitious name MJL Enteprises. All I did was carry over that name into 1973. It was merely a tax category, something -- an account to put it in, a fictitious name.

MR. STOLZAR: I have no further questions.

MR. STEIN: I have no more.

MR. REINER: No more questions.

MR. STOLZAR: Excuse me. May I ask one more question?

REDIRECT EXAMINATION (Continued)

BY MR. STOLZAR:

Q Mr. Biondi, do you know the present resting place of the $8000 that came from your account?

A I believe Mr. Rudell is holding that.

Q Would you tell us how you arrive at that belief?

A I gave Mr. Lawlor a check to pass over to Mr. Rudell, I believe. I know Mr. Rudell has it because he told me so.

MR. STOLZAR: No further questions.

THE WITNESS: How it got there I don't recall exactly.

THE COURT: You are excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. STOLZAR: Your Honor, at this point I have no more live witnesses. However, there were two depositions taken by the defendants Gulf & Western of witnesses who reside in Pittsburgh and in Chicago. Those depositions, I understand, have been filed with the Court.

THE COURT: Read the pertinent parts or them into the record.

MR. STOLZAR: They are rather lengthy. The pertinenent parts are lengthy. Maybe I can either direct the Court's attention to certain sections or certain pages --

THE COURT: All right. Just put the depositions in. I probably can scan them faster than you can read them.

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MR. STOLZAR: Thank you.

Shall I give you the pertinent pages on the record so that you have it available to you, your Honor?

THE COURT: No. If you can't read the pertinent parts, let me pick out what is pertinent.

MR. STOLZAR: Thank you, your Honor.

These are the depositions of Richard Boester and Robert Bushee.

THE COURT: These are not parties, I take it, to this action?

MR. STOLZAR: No, they are witnesses who were deposed pursuant to subpoena issued by the defendant Gulf & Western.

THE COURT: I notice you are standing, Mr. Stein. Do you have something?

MR. STEIN: Yes, your Honor, just simply to make the observation that the testimony of these witnesses are being offered by the plaintiff despite the fact that Gulf & Western took the depositions originally.

THE COURT: I certainly didn't understand anything else. I don't know how anybody can conceivably understand anything else.

MR. STOLZAR: In connection with the Bushee testimony, your Honor, I offer in evidence Plaintiff's

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Exhibit 19, the minute book of Robert Bushee Associates, heretofore marked.

THE COURT: Received.

(Plaintiff's Exhibit 19 was received in evidence.)

xx MR. STOLZAR: If your Honor please, may I ask Mr. Rudell to take the stand with respect to the one item of the $8000 and its present whereabouts.

THE COURT: Maybe counsel will stipulate and save taking the stand.

MR. STOLZAR: May we have a- stipulation that Mr. Rudell received the $8,678.50 balance of the Mark Group account, and a further stipulation that he did offer that sum of money to Gulf & Western, and Guld & Western rejected it?

MR. STEIN: The first part of the stipulation I am willing to agree to, your Honor. The second part I cannot agree to. The fact is that if counsel wishes to --

THE COURT: All right, take the stand.

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RICHARD I. RUDELL, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STOLZAR:

Q Mr. Rudell, are you one of the attorneys of record for the plaintiff in this action?

A Yes, I am.

Q Mr. Rudell, you have heard the stipulation to the effect that you received the eight thousand-odd dollar balance of Mark Group funds. After receipt of such funds, what did you do concerning those funds?

THE COURT: First of all, when did you receive it, who did you get it from, and what did you do with it?

THE WITNESS: I received the check on or about July 13, 1973, and it was a check drawn by the Mark Group signed by C. William McDermott for the Mark Group.

After some conferences with Mr. Lawlor, I wrote a letter addressed to Mr. Bluhdorn, chairman of the board of Gulf & Western, David N. Judelson, and Martin S. Davis, and I have here a photocopy of the letter which I wrote to them.

And I suggested in the letter that we set up a meeting --

MR. STEIN: May we see the document that he is referring to, your Honor? I object to reading from the document.

THE COURT: Sustained.

Q Will you tell us what was in the letter?

THE COURT: No, Counsel, no. If you want to put the letter in evidence, put the letter in evidende.

MR. STOLZAR: I offer the letter in evidence. This will be Plaintiff's Exhibit 21.

THE COURT: Have you seen it?

MR. STEIN: Yes, I have.

THE COURT: All right, received.

(Plaintiff's Exhibit 21 was received in evidence.)

xx Q Did you receive a response to the letter?

A There was no letter written to me as a response, as I recall. I think I spoke to Mr. Jones' office, the chief counsel, and he said none of these people would want to see me, but that he would see me, and we arranged a meeting.

Instead of the end of August, which I had suggested in the letter, I think I finally saw him in September or October. I went to his office at the Gulf & Western Building pursuant to the appointment, and I told

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him that I was prepared -- that I had received this money, I was prepared to turn it over, and he said he didn't want any part of that money.

THE COURT: Where did you have the money at that time?

THE WITNESS: In my special account in the Chemical Bank.

THE COURT: In your name?

THE WITNESS: In my name.

THE COURT: In your trust account for clients?

THE WITNESS: Yes, your Honor.

MR. STOLZAR: No further questions, your Honor.

CROSS EXAMINATION

XX BY MR. STEIN:

Q Mr. Rudell, where is that money today?

A In a special account.

Q Do you have the account number?

A I can give it to you.

Q Could I have it, please?

A Yes, certainly.

(Pause.)

(The witness left the witness stand and then returned.)

A I carried it in my special checking account.

In view of his rejection, I assumed that it was my money --

Q Mr. Rudell, I simply asked you for the number of the account.

A I want to tell you what I did with the money.

THE COURT: Mr. Rudell, nobody asked you what you did with the money. He asked you what the number of your account was.

A I put it in my special account in the Chemical Bank. I don't believe I have an account number with me in my pocket. Thereafter, I transferred the money --

Q Mr. Rudell , would you tell me what branch of the Chemical Bank you put the money in?

A Times Square branch.

Q Is that where the money is now?

A No, I transferred the money into a savings account.

Q Would you please give me the name of the bank where the money is and the number of the account?

A The New York Bank For Savings, No. 27-45804.

Q Give me the branch, please.

A 1501 Broadway, in the first floor of the building where my office is.

Q Thank you, Mr. Rudell.

Would you tell me the date you had this telephone

conversation with Mr. Jones, whom you describes as the chief counsel of Gulf & Western in your direct testimony?

A Probably, as I recall, after Labor Day, some time in September, because I think that I haven't found the piece of paper yet.

Q Thank you, Mr. Rudell.

Mr. Rudell, I just wanted to know when the date was. Can you fix a date as to when you had this telephone conversation?

A With Mr. Jones?

Q Yes. Can you fix the date?

A I told you in about September.

Q You don't know the exact date?

A No, but I know when I saw him because I have a record of it in my papers.

Q When did you see Mr. Jones?

A In October.

Q Do you have the date when you saw Mr. Jones?

A I think I have it written down, the latter part of October. If you let me go through my papers, I will dig out the memorandum I made.

Q I will take the latter part of October.

You saw Mr. Jones in his office?

A Yes, I did.

Q What did you say to Mr. Jones, and what did he say to you?

A I told Mr. Jones that according to the tenor of the letter, that he was improperly treated by the company and --

THE COURT: Who was improperly treated?

THE WITNESS: Mr. Lawlor.

A And I said we have this money, this is your money, and he said -- I am going to try to recall -- I can't recall the exact words, I may have it in my memorandum -- he said that Lawlor was persona non grata, and he was a son-of-a-bitch, and he wouldn't have anything to do with him, nobody in the company can stand him, they don't want the money, they don't want to hear anything more about it.

Q You made a memorandum of your meeting with Mr. Jones?

A I made a memorandum of it.

Q Will you produce it, please?

A Why certainly, if you give me a moment I will see what I have over there.

(Pause.)

(The witness left the witness stand.)

THE COURT: Maybe we can go to something else. Is this your last question of this witness?

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MR. STEIN: One further question.

(The witness returned to the stand.)

THE COURT: You can recall him later on in the case.

MR. STEIN: Surely.

Q Mr. Rudell, what is the name of the bank account in which the money is deposited in the New York Bank For Savings?

A Richard I. Rudell, Special.

MR. STEIN: Thank you.

Nothing further.

MR. REINER: I just have one or two questions, your Honor.

CROSS EXAMINATION

XX BY MR. REINER:

Q When you first received the check for $8,900, was that hand delivered to you?

A I am sorry, I didn't hear you.

Q Was that check hand delivered to you when you first received it?

A The money was -- the check was mailed to me with a note from Mr. Lawlor, period.

Q Was that check signed by Mr. Biondi?

A The check was signed C. William McDermott, and

the name on the check was the Mark Group.

MR. REINER: Thank you very much.

No further questions.

THE COURT: All right, you are excused subject to further recall when you find your memorandum.

MR. STOLZAR: At this point the plaintiff rests.

MR. STEIN: Your Honor, may I be heard on a motion to dismiss?

THE COURT: You may make the motion, but no argument.

MR. STEIN: May I briefly point out the grounds of the motion?

THE COURT: No, just make the motion because I am going to reserve decision on it.

MR. STEIN: Defendants Gulf & Western, Judelson and Davis here move pursuant to 41(b) to dismiss the complaint in its entirety for failure to state claim against Gulf & Western and the two individual defendants that I represent.

THE COURT: I am sure you had a broader motion than that in mind, than a motion to strike the complaint. We didn't have to go through a trial in order for that motion.

MR. STEIN: Your Honor, I misunderstood you

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perhaps. I wanted to speak on behalf of the motion.

THE COURT: I said I would not hear argument, but to make your motions for the record. There is a difference.

MR. STEIN: I move to dismiss the first cause of action which alleges in substance that the defendant Judelson --

THE COURT: I know what it alleges.

MR. STEIN: Your Honor, we move to dismiss the three causes of action in the complaint naming Gulf & Western, the individual defendants Judelson and Davis, on the grounds that the plaintiff has failed to make out a prima facie case against the said defendants.

THE COURT: Reserved, as well as on your original motion for summary judgment.

Motion to dismiss the complaint for failure to state a claim, also on the motion for failure to prove one.

MR. REINER: Your Honor, on behalf of the defendant Gallagher Presidents Report Inc. and Cynthia Billings, I also move for a dismissal of the third cause of action of the complaint on the ground of failure to make a prime facie case, and that there has been a complete failure of proof in any form on the part of the news media in making the publication, and under the Gertz decision,

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Gertz versus Welch in the Supreme Court, the Supreme Court has now stated that there must be some fault, some negligence proven by the plaintiff as a part of their prima facie case on burden of proof.

THE COURT: I told you I would not hear argument.

MR. REINER: I am sorry. On those grounds there has been a failure.

I also move for a judgment dismissing the complaint.

THE COURT: I reserve decision.

MR. STEIN: Your Honor, may I proceed?

MR. REINER: Forgive me, your Honor, I reserved the right to make a motion to strike at the end of the plaintiff's case that exhibit that your Honor said I had a right to move against.

THE COURT: I will reserve on that too.

MR. REINER: Thank you, your Honor.

THE COURT: I would say to counsel that we must recess today at 4.25 promptly, so plan your day accordingly.

If you have any witnesses that have to go to Venezuela, I suggest you put them on now, not hold them until the end of the day.

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J E R E M I A H P. M c A W A R D called as a witness in behalf of the defendants Gulf & Western, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEIN:

Q Mr. McAward, would you briefly describe your occupation and business affiliation?

A Yes, sir. I am the president of McAward Associates, Incorporated which is an investigative consulting firm.

Q Would you briefly describe your business background, sir?

A I have been engaged in investigative and security type work since service in the counterintelligence field during the 1950's. I worked after that for the Mosler Safe Company as a salesman of security devices. After that I joined Retail Credit Company as an investigtor for five years, then Vincent Gillen Associates as an investigator, Fidelifacts, which is a nationwide network of former FBI agents in the investigative field.

In 1966 I formed McAward Associates, Inc. and have been in that business ever since for myself.

Q What is the business of McAward Associates, Inc.?

A We conduct securities surveys, we investigate

job candidates, people being considered for jobs. We investigate organizations being considered for acquisition or merger. We search for runaway children, do electronic debugging, and handle some surveillance work.

Q Mr. McAward, would you just describe any licenses or professional memberships that you hold?

A Yes, sir.

I am a member of the American Society for Industrial Security, and I hold a private investigator's license which is issued by the State of New York.

Q Mr. McAward, what if anything did you do for Gulf & Western in 1973?

A In early '73, Martin Davis, a senior vice-president of Gulf & Western asked me to investigate some leakage of corporate information to persons outside the company such as newspapers, the media, Gallagher Reports.

Q What did you do, Mr. McAward?

A I beg by going into the corporate offices of the Gulf & Western Building after hours in March and examined all the corporate offices, secretarial areas, and went through the building generally attempting to find any document that had been left about or lapses in security.

Q What if anything did you come across during the course of your investigation, Mr. McAward?

A In March '73 in the photocopy room on the 36th floor employees relations department, I found a copy of a letter bearing the letterhead the Mark Group. The letter was dated March 1st, '73, I believe.

Q I show you a document that has heretofore been marked Exhibit 1 for the defendants for identification. Is that the document that you found, Mr. McAward?

A Yes, it is.

Q What if anything did you do concerning that document?

A I determined that the Mark Group was not a recognized division or subsidiary of Gulf & Western Industries by checking corporate records and by making inquiries of senior management.

Q Did you do anything else?

A Yes, I determined that the typewriter that was used to type this letter belonged to the secretary of C. W. McDermott, who was Lawlor's right-hand man.

Q Were any other documents initially found by you?

A Yes, I found a resume of a man designated LTR-102.

Q I show you a document that has heretofore been marked as Defendant Gulf & Western Exhibit 2 for identification.

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Is that the document you just referred to in your testimony?

A Yes, sir, it is.

Q Did you take any steps concerning Exhibit 2, Mr. McAward?

A Yes, from my knowledge of the organization and the people in it, I determined that LTR-102 really referred to Robert T. Lardom, who was an employee of Gulf & Western.

MR. STEIN: I offer Defendant Gulf & Western Exhibits 1 and 2 in evidence.

(Defendants' Exhibit 1 and 2 were received in evidence.)

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Q Did you pursue the matter after your finding of Exhibits 1 and 2?

A Yes, sir, I went back into that area on subsequent evenings after the close of business. I continued to search in that general vicinity for additional documents or pieces of evidence that would indicate why the Mark Group was there or what it was.

Q What if anything did you find on that occasion?

A I found additional resumes in the trash receptacles of the photocopy room in particular. One was a letter from a Victor Karl and a resume.

Q I show you a document heretofore marked as

Defendant Gulf & Western 3 for identification. It has already been marked in evidence, already been admitted in evidence as Exhibit 3.

Is that the document you just referred to in your testimony?

A Yes.

Q Mr. McAward, did you examine that document?

A Yes.

Q At the time you found that document, were you able to come to any conclusions?

A Yes, I came to the conclusion that it had been received by Mr. Lawlor as vice-president, because it had his office stamp on it, and Mr. McDermott had written a letter to -- what appeared to be a prospective client or client of the Mark Group attempting to market Mr. Karl.

Q What if anything was done with Mr. Karl's resume?

A The resume was stamped "The Mark Group" and was submitted to the man Mr. McDermott wrote the letter to, who was the manager of manpower placement at the Olin Corporation.

Q Did you find any other documents during the course of your investigation?

A Yes, sir, I found one which was very similar to

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this wherein a letter was written to Gulf & Western Industries, Mr. Lawlor in particular, by a man by the name of Philip Kawesch.

Q I show you Defendant Gulf Exhibit 4 in evidence and ask you if that is the document you just referred to.

A Yes, sir, it is.

Q Were you able to come to any conclusions concerning Exhibit 4?

A Yes, this seemed to follow the same pattern as the Karl letter. The letter was received by Mr. Lawlor's deparment, was stamped "Received, V.P. Employee Relations," and the next item attached attached to the letter was a letter to Mr. Kawesch from Mr. McDermott asking him to contact him at the Mark Group, but he gave his phone number for Mr. Kawesch to contact him as he had an opening.

Q Did you find any other documents in your investigation?

A Yes, I found a lot of material including an organizational chart that was handwritten.

Q I show you a document, Exhibit 5 of defendant Gulf & Western, and ask you if that is the chart you just referred to.

A Yes, it is.

Q Will you tell me where you found the documents

that you have just described in your testimony, Exhibits 3, 4, and 5?

A Exhibit 3 and Exhibit 4 were found in the employee relations department in the ir files.

Exhibit 5 was found on a pad on Mr. Lawlor's desk.

THE COURT: Were these concealed in any way, any of those documents?

THE WITNESS: These were in the --

THE COURT: Any of them that you have talked about.

THE WITNESS: Exhibit 3 and Exhibit 4 were in a file drawer.

THE COURT: Was the file drawer open?

THE WITNESS: Yes, they were unlocked.

THE COURT: How were they filed?

THE WITNESS: They were filed under -- in a folder.

THE COURT: How, by what system, alphabetically, how?

THE WITNESS: Filed alphabetically. There was nothing on the drawer to indicate what was in it, so we just opened it and went through it. The organizational --

Q Where were these file drawers located, Mr. McAward?

A In the employee relations department.

Q Was it in anybody's office?

A No, sir. They are outside of a row of offices.

THE COURT: Were there other file cabinets there?

THE WITNESS: Yes, sir.

THE COURT: What were in the other file cabinets?

THE WITNESS: There were things that related to Gulf & Western Industries.

THE COURT: What?

THE WITNESS: Organizational charts, business manuals, personnel records of employees for Gulf & Western.

THE COURT: So these were personal records where personnel records were filed; is that it?

THE WITNESS: Yes, sir, and this Exhibit No. 5 was found on Lawlor's desk, also in full view.

Q Did you find any other documents during your investigation?

A Yes, sir, I found a pair of checks that were imprinted "The Mark Group," which indicated that there was an account in that name in the Union Trust Company in Stamford, Connecticut.

THE COURT: Where were these?

THE WITNESS: These were in Lawlor's attache case, which was propped open on his windowsill.

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THE COURT: Open?

THE WITNESS: Yes, sir.

Q Mr. McAward, did you do anything concerning those checks?

A Yes, sir.

Q What did you do?

A I contacted --

Q Did you make any copies of the checks?

A Oh, yes, I did. I made Xerox copies of all these documents.

Q I show you Defendant Gulf & Western Exhibit 6 for identification.

Is that the Xerox that you made?

A Yes, sir.

MR. STEIN: Your Honor, at this time I offer into evidence Defendant Gulf & Western Exhibit 5 and Defendant Gulf & Western Exhibit 6.

(Defendants' Exhibits 5 and 6 were received in evidence.)

xx Q Did you find any other documents during the course of your investigation?

A Yes, sir, I did. I found some art work, found some original art work that indicated that the Mark Group letterhead and logo was being printed along with some

Robert Bushee letter paper by the Gulf & Western printing organization.

THE COURT: Where did you find this?

THE WITNESS: They were also in the files in the employee relations department, sir.

Q I show you a document marked as Defendant Gulf Exhibit 7.

Is that what you found, Mr. McAward?

A Yes, sir, this is a copy of it.

Q Will you describe what Defendant Exhibit 7 consists of briefly?

A Yes. It's a logo, looks like a capital M standing over a capital G with an arrow drawn from the right into the center of the G.

The other one is the --

MR. STOLZAR: May I respectfully suggest that the exhibits speak themselves.

THE COURT: Yes, I would think so.

Q Were any documents concerning Robert J. Bushee & Associates found?

A Yes, sir. There were letterhead papers.

MR. STEIN: I offer Defendant Gulf & Western Exhibit 7 in evidence.

(Defendant Exhibit 7 was received in

xx

evidence.)

Q Mr. McAward, what conclusion if any did you come to as a result of this investigation?

A By analysis of the documents, I concluded that resumes arriving -- resumes arriving at Gulf & Western were being channeled --

Q Continue, Mr. McAward.

A -- to the Mark Group by Lawlor and McDermott for their use in the business of executive search.

Q Did you report the results of your investigation to anyone?

A Yes, I did. I reported orally to Martin S. Davis, a senior vice-president of Gulf & Western.

Q What did you tell Mr. Davis orally?

A That I believed there was a conflict of interest between Lawlor and McDermott and Gulf & Western Industries, because they appeared to be operating an executive search firm called the Mark Group.

Q Did you follow up on your oral report?

A Yes, sir, I went into those offices again on subsequent evenings, and I obtained more information, more documentation, and I prepared a written report dated April 24, 1972.

Q I show you a document marked Defendant Gulf &

Western Exhibit 11.

Is that the written report that you have just referred to in your testimony?

A Yes, it is.

THE COURT: This additional documentation, was that also all out in the open?

THE WITNESS: Some was in the files, sir. None of it was locked.

THE COURT: None of it was locked?

THE WITNESS: No, sir.

THE COURT: None of it concealed in any way?

THE WITNESS: Except in desk drawers, sir.

THE COURT: Well, were the desk drawers locked?

THE WITNESS: No, sir.

MR. STEIN: Your Honor, at this time I offer Defendant Gulf & Western Exhibit 11 in evidence.

THE COURT: Received.

(Defendant Exhibit 11 was received in evidence.)

xx MR. STOLZAR: We have consented to that.

Q Did you say anything on the submission of your report?

A Yes, sir, I suggested that Lawlor and McDermott and other subordinates be interviewed to determine if t' ere

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was a logical explanation for their conduct.

Q Did you suggest that any kind of meeting be set up?

A Yes, sir, I suggested that a meeting be held, and they agreed to my suggestion.

Q Who was present when you made the suggestion?

A Mr. Davis, Mr. Judelson, Mr. Bluhdorn, Mr. Jones.

Q At that time did you say anything about your report?

A Yes, sir, I said that there was a possibility that these people were on a course that was in conflict with what they were supposed to be doing for Gulf & Western.

THE COURT: How many copies of that report did you make?

THE WITNESS: Three.

THE COURT: Who were the distributees of it?

THE WITNESS: Mr. Davis got one copy, Mr. Judelson got one copy, and I kept a third, your Honor.

THE COURT: Where did you make the copy?

THE WITNESS: The copies were made in my office.

THE COURT: Photostated?

THE WITNESS: No, sir, it was an original and two carbons.

THE COURT: Carbons?

THE WITNESS: Carbons, I believe, yes

THE COURT: Your secretary typed it?

THE WITNESS: No, I typed that report myself, sir, because she was sick that day.

Q Did you go to any meetings concerning your report?

A Yes, sir, on April 26, 1973 a meeting was held at which Lawlor, McDermott, and others were interviewed.

Q Were any arrangements made to record the meeting?

A Yes, sir. I suggested that the statements made at the meeting be recorded so no one would have any doubts later about what was said.

MR. STEIN: Your Honor, at this time I would like to offer into evidence the tape of the meeting that was held on April 26, 1973. The tape cassette has been marked Exhibit 13 for identification, and its admission has been stipulated to by counsel.

THE COURT: Received.

(Defendants' Exhibit 13 was received in evidence.)

xx THE WITNESS: I have a machine here if you want to play it.

THE COURT: Is it just an ordinary cassette?

THE WITNESS: No, it's a modified one, sir.

MR. STEIN: We have a machine here. It's

approximately twenty minutes.

THE COURT: Is that the same thing of which I have a transcript?

THE WITNESS: Yes.

MR. STEIN: Yes, it is, your Honor.

THE COURT: I don't need to hear it.

Q Mr. McAward, have you or any person to your knowledge associated with Gulf & Western made any statements to Gallagher's or Cynthia Billings or any Gallagher personnel concerning the plaintiff for the events which led up to plaintiff's resignation on April 26, 1973?

A No, sir.

MR. STEIN: Your witness.

CROSS EXAMINATION

BY MR. STOLZAR:

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Q Mr. McAward, do you know whether Mr. Bluhdorn read your typewritten report?

A He looked at the first page, and then he said, "Because you have kept me waiting an hour and a half, you better tell me what's in it."

Q But you handed him one of these three copies?

A Yes, and then he handed it back to me.

THE COURT: Did you leave it with him?

THE WITNESS: Yes, sir. I am sorry, sir, not

with him, no. It was left with Mr. Judelson and Mr. Davis.

THE COURT: What did you do with his copy?

THE WITNESS: I didn't prepare a copy for him, sir.

THE COURT: I thought you told me you gave one to Bluhdorn, one to Judelson, and one to Davis.

THE WITNESS: I gave one to Bluhdorn, and he gave it back.

THE COURT: What did you do with it after he gave it back?

THE WITNESS: Mr. Judelson had one and Mr. Davis had one.

THE COURT: I know. What did you do with Mr. Bluhdorn's copy?

THE WITNESS: I gave it to Mr. Judelson.

THE COURT: You gave Judelson two copies?

THE WITNESS: No, sir, I only had three copies.

THE COURT: Well, we are missing one copy as I see it.

Go ahead. One copy is floating around somewhere.

THE WITNESS: No, sir, I have a copy. That is the third copy.

Q Had you, prior to going into the meeting of April 26, 1963, formed a final definite conclusion as to whether the Mark Group was authorized or was a part of the Gulf & Western operation?

A Had I personally formed a conclusion?

Q Yes.

A I was personally of the opinion that it was not an authorized part of Gulf & Western Industries.

Q Did you have any reservations?

A Did I have? No, sir, I did not.

Q Why then, sir, did you in your April 24, 1973 typewritten report on page 8 captioned "Questions raised, the documents and the resulting investigative work raised the following questions:

"Is the Mark Group a privately operated and owned firm dominated by Lawlor and McDermott to which Gulf & Western will be or is being channeled for the personal benefit of these employees?

"Question 2:

"Are company facilities and personnel being misused today for the private benefit of Lawlor and McDermott?

"3. Are Lawlor et al therefore engated in a damaging conflict of interest as a result of their

Mark Group activities?"

There are other such questions.

A Yes, that was to give Lawlor and McDermott the benefit of the doubt that perhaps the other senior members of management had. I personally had no doubts, sir.

Q Who of the senior management did you question concerning the Mark Group?

A I spoke to Mr. Davis about the existence of the Mark Group. I checked with Mr. Forson, who was the treasurer, to determine if there was an organization known as the Mark Group within the Gulf & Western hierarchy.

Q Did you question Mr. Lawlor?

A No, sir, I did not.

Q Did you question Mr. McDermott?

A No, sir, I did not.

Q Did you question Mr. Boester?

A No, sir, I did not.

Q Did you question Mr. Judelson?

A No, sir.

THE COURT: Did you question Mr. Biondi?

THE WITNESS: No, sir, I did not. They all appeared to be part of it.

Q Judelson appeared to be part of it?

A No, sir, not Judelson, those mentioned on the

chart.

Q You wound up your conclusions on page 9:

"Therefore, we recommend that senior management interview the personnel involved on the basis of the evidence so far developed and then act in accordance with the full facts. Alternatively, we can pursue our investigation, particularly awaiting Boester's expected retirement, the shift of his severance pay, and further recruiting activities by Mark."

A Yes, sir.

Q Would you say after attending that meeting on April 26, 1973 that it was an interview?

A Yes, sir.

Q Did you ask any questions?

A Yes, I did.

Q Did you ask any questions of Lawlor?

A No, sir, I did not. I don't recall asking Lawlor any questions.

Q You sat through the entire meeting with Lawlor and didn't ask any questions of him?

A No, sir, other people were asking the questions.

Q So you were a spectator?

A No.

Q Your presence wasn't even necessary; is that

right?

A No, sir, I would be able to refute something that perhaps he said that I did not include in the report.

Q Was there anything he said that you could refute?

A I may have made a comment or two on the tape. I don't recall.

Q Was there anything he said that you could refute?

MR. STEIN: Your Honor, we have a verbatim transcript of what occurred in the meeting room. Perhaps if the witness looked at the transcript which has been admitted into evidence, he can best answer the questions.

THE COURT: Let's see what he can do on his own testimony.

THE WITNESS: Your question, sir?

Q The question was, was there anything that Lawlor said at the April 26, 1973 meeting at which you were present which you could refute?

A There were several points that I felt I could have refuted, but they were refuted by the other senior management officials there.

Q Would you tell us what those points were?

A Specifically I do not recall, sir.

Q Did Mr. Lawlor withhold any answers to any of the questions put to him Judelson?

A He gave them answers to Mr. Judelson's questions.

Q Did you have any facts or any knowledge to refute any of the statements made by Lawlor?

A Much of the refutation necessary was in the report, sir.

Q You mean the report consisting of telephone bills, a few letters? Is that what you are talking about?

A Yes, sir.

Q Would you tell us again how you came to be looking through the personnel offices, and how you came to run across these so-called documents?

A How I came to run across them originally?

Q Yes.

A I was making a security survey of the building.

THE COURT: Who retained you?

THE WITNESS: Gulf & Western Industries, sir.

THE COURT: Who?

THE WITNESS: Martin Davis requested that I --

THE COURT: What was the arrangement?

THE WITNESS: The arrangement was that I would see if I could determine how leaks were --

THE COURT: No, your financial arrangement.

THE WITNESS: Oh , I would be paid on an hourly basis for the work done.

THE COURT: Were you on the Gulf & Western payroll as such?

THE WITNESS: No, sir.

THE COURT: You remained an independent agency?

THE WITNESS: Yes, sir.

THE COURT: You were still paid on an hourly basis?

THE WITNESS: I would submit the number of hours that I had performed on a particular investigation, and I would be paid in due course.

THE COURT: That was so as t this particular investigation?

THE WITNESS: Yes, sir, as it is with all of them.

THE COURT: How long had this arrangement gone on with reference to this particular Lawlor matter here?

THE WITNESS: This particular investigation ran probably a month from the time of my receipt of it till the Lawlor's termination.

THE COURT: You were paid the same way, on an hourly basis, submitted a bill; is that it?

THE WITNESS: At the end of the report I submitted a bill for what I had expended in time, yes.

Q Isn't it a fact that you were not specifically retained to examine into Lawlor or the Mark Group, but that

you were originally retained to do a security check revolving around potential leaks of intra-corporate information to the media including the Gallagher Presidents Report?

A Yes, sir.

Q And that in the course of that security check, you happened to run across the piece of paper that contained the word "Gallagher," and therefore you went on further?

A That's wasn't why I went on further with Mr. Lawlor, no. That happens to be a piece of paper --

THE COURT: Were you working under anyone's supervisor?

THE WITNESS: I was reporting directly to Mr. Davis.

THE COURT: You were the one determining what you investigated, the day-to-day detail of your work?

THE WITNESS: Yes, sir.

MR. STOLZAR: I ask your Honor's indulgence. I have not had a chance to see this document at length.

MR. STEIN: Your Honor, our next witness, Mr. Judelson, who is the president of Gulf & Western, has a commitment out of town tomorrow. I wonder if I could put him on now and recall this witness.

THE COURT: Sure.

MR. STEIN: Mr. McAward, will you step down?

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DAVID N. JUDELSON, called as a witness in behalf of the defendants, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. STEIN:

Q Mr. Judelson, would you briefly describe your relationship to Gulf & Western?

A I am the president of Gulf & Western. I am one of the three original founders of the company in 1956. I am the chief operating officer. As such, I am responsible for all the operatings of Gulf & Western which, through eight groups, employ approximately 70,000 people, have over 250 plant locations, over 1200 sales offices in every state in the union except Alaska, and every major foreign country and many minor foreign countries.

Q Mr. Judelson, you are also a director of the company, are you not?

A I am also a director and a member of the executive committee.

Q Up until April of 1973, did your duties involve the employee relations department?

A Well, that department reported directly to me.

Q When Mr. Lawlor was vice-president employee relations, he reported to you?

A Yes, he was, and I believe I hired Mr. Lawlor in 1968, I think it was.

Q What were Mr. Lawlor's duties as employee relations vice-president?

A He would be in charge of all employee relations for the corporation, for the recruitment of personnel at the lowest as well as the highest executive level. He would be responsible for manpower planning and then its development, and also he would be responsible for all matters that would have to do with employee morale, suggestions with regard to that, systems for analyzing people's performance, suggestions for promotions and/or wage increases.

Q Mr. Judelson, did from time to time applications for employmen t for positions with Gulf & Western come to your office, to your attention?

A All the time.

Q What disposition did you make or your secretary make at your instance of applications for employment and resumes?

A The ones that would appear to be of a more senior level would be brought to my attention by her. The ones that were not as senior she would just send directly to employee relations department.

After the ones that I saw that she gave to me,

I would forward them to the employee relations department, and in all cases I would put Mr. Lawlor's name on it, so she would know where I wanted it to go.

Q What information regarding applicants did Mr. Lawlor have access to?

A He had total information to all resumes and to anything that he would want to know about throughout the corporation about any personnel.

Q Would he have access concerning identity of employees as well as their skills?

A Absolutely.

Q Mr. Judelson, what is the Gulf & Western policy respecting banking relationships?

A Well, it's a violation of the corporation and the charter which is set up that any bank accounts by any company or any group within the Gulf & Western corporate structure cannot be established without bringing it to the attention first of the senior vice-president in charge of banking relations, and then, if it is approved by him, it must get approval by the board of directors of the corporation.

Q So that if an employee of Gulf & Western wants to open up a bank account, there is a procedure for doing so; isn't there?

A No, there is none, because no employee of Gulf & Western could establish a bank account except for himself personally. Only a company entity, a company entity owned by Gulf & Western could do it, and then only by the procedures that I have just stated.

Q Did you ever consent to the organization of an in-house placement or personnel agency operating in Gulf & Western?

A Never.

Q Did you ever become aware that such an in-house placement agency was so operating?

A Did I become aware?

Q Yes.

A Only in the spring of last year when I was made aware of this through information forwarded to me by Mr. Davis, that a compny called the Mark Group had been established. That was the first I heard about it.

Q Did you ever authorize a company called the Mark Group to become a member of the Gulf & Western group of companies as a subsidiary or a diivision?

A Absolutely not.

Q Did you ever authorize it in any form as an entity?

A Absolutely not. I had never heard of it.

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Q Did you ever authorize the Mark Group to have a bank account?

A Absolutely not. We just explained that.

THE COURT: Did you ever discuss with Mr. Lawlor any plan looking to the formation of an entity within the umbrella of Gulf & Western to handle placement in and out?

THE WITNESS: Is that the question?

THE COURT: That is the question.

THE WITNESS: The answer to that is absolutely yes.

THE COURT: When?

THE WITNESS: About nine months to a year prior to this information about the Mark Group that was brought to me in the spring of 1973, so it would have been in the spring or the summer of '72.

Mr. Lawlor came to my office one day, and at that time he asked me about whether or not I would be interested in the establishment of a company, literally a management placement company that would be set up within Gulf & Western.

The idea behind this would be many-fold. One would be that we would be able, by advertising as a regular company on the outside world, that has no control

by Gulf & Western, and there are hundreds of these companies, that we would be able to have a whole file of personnel available for hiring within Gulf & Western. At the same time, we would be able to have available to us these personnel, and we could place them with other com panies. At the same time when we were looking ourselves for people directly and resumes were sent to us, it could be put inside this company, and if we couldn't use them, they in turn would be able to place them again with other companies, this is companies within Gulf & Western.

The reason I remember this so specifically is that I was absolutely shocked that the subject was even being broached. I told Mr. Lawlor at that time, and I can't quote myself directly but I know the patterns in which I speak, that this was an absolute conflict of interest to the corporation.

It would be counterproductive to what the corporation was about. It was in the business of producing products, doing all sorts of things, but was not in the management placement buisness.

Mr. Lawlor at that time said to me, and this is what -- you have to go back now about two and a half years ago -- that manyof these companies, I believe, were going public, and there was high multiples on their earnings

being put and what-not, and that this might be something that we'd want to then take public, and we'd have a vehicle with a high multiple that we could do all sorts of management service requirements within this structure.

I told Mr. Lawlor I was not interested in it, that it could have nothing to -- that would be of any meaning in the world that Gulf & Western lived in day in and day out by the very magnitude of Gulf & Western compared to what this could be, but overriding all of that was the approach that would be counterproductive to the corporation: and what I said to him at that time was that if in fact we embarked upon this course, that eventually no management placing company would ever give us resumes when we wanted people for ourselves, because they would know that what we would do with them would be to put them in our own company who would be in competition with them, an what would happen would be that our sources, if we could not get these people through advertisements, and we have never been that successful through advertisements, and we had to go to outside management placement firms, they would be afraid to go ahead and give us personnel for what our every-day life blood requirements were to replace people who were either reitiring or who quit or who weren't found to be competent.

So I said that I frankly was surprised at the

judgment that he would even broach the subject with me because it was a sheer violation of what the best interests of the corporation were.

I told him at the time that he had enough to do in his job without thinking about setting up any other entities. I told him at that time that I was totally opposed to the subject, that I would not have it,and that under no circumstances did I want to hear about it again, and that is a fact, your Honor.

THE COURT: Was there any discussion of any kind of a pilot program to see how it would work?

THE WITNESS: There was at that particular time. I said to Mr. Lawlor, I said, "One of the first things I told you when I hired you in '68 was that I wanted a file in this company that was a profile of all of our key executives throughout the corporation, so that if in fact company A needed, let's say, an engineer of a certain type, and company B three thousand miles away owned by Gulf & Western had somebody who could perform that job, that we would know who at company B could perform a requirement as needed by company A, and maybe this would be an advancement for that man working in company B going to company A."

I told him that up to this time that file was not set up. This was four years later. I said, "This

hasn't even been done, and now that we have talked about this."

In the Gulf & Western business plans, and each department submits a business plan, in 1971, 1972, what is referred to as a management resources program, is outlined in there, which is this manpower planning and development, finding out what our requirements are throughout the corporation, who our people are that we have that could get advancements, where could we get personnel from outside, and to build that file up in Gulf & Western; and there was none.

And I said to him at that time, "Just get on with doing that. That's been one of your original directives from me since '68 and it isn't here. Why talk about now setting up as a separate company when we can't even fill our own needs?"

THE COURT: Now would you mind answering my question?

THE WITNESS: I thought that answered it.

THE COURT: No. I asked you whether you discussed setting up a pilot program along the idea that he suggested.

THE WITNESS: Well, the pilot program --

THE COURT: Did you? Yes or no?

THE WITNESS: Along the pilot program is what I told you.

THE COURT: Yes or no?

THE WITNESS: The answer to that is yes, but it should have already been done, but not as a company within.

THE COURT: No, listen. The pilot program to act as a placement agency for placing people outside of Gulf & Western.

THE WITNESS: Absolutely and totally, unequivocally no.

THE COURT: Or shuffle people out?

THE WITNESS: No, absolutely no.

Q Mr. Judelson I show you Exhibit 11 in evidence. Do you know what that document is?

A This is the final document from McAward Associates which was the information that Mr. McAward presented to myself after it had been -- I guess at the same time or just hours after it had been presented to Mr. Davis.

Q When was that report presented to you, Mr. Judelson?

A I don't know the date, but it was like two days before the meeting with Mr. Lawlor, so whatever date that was, it would have been two or three days before.

Q I suggest to you that the meeting with Lawlor was

April 26. Does that help you fix the date?

A This would have been the 23rd or 24th. I don't know. Is there a date on this? This is April 24th. It was April 24th.

Q Mr. Judelson, are you familiar with the contents of the report?

A Well, at that time I was. I am not -- I couldn't tell you everything that is in there now.

Q What did you do, if anything, on receipt of the report

A What did I do with it?

Q What did you do? What steps did you take after you received it?

A Well, it was presented to me with Mr. Davis and Mr. McAward in attendance. I immediately called legal counsel for Gulf & Western, Robert Jones. We sat down and went over the contents, and I then said that this was an incredible thing, if this is true I will have to be -- we will have to terminate Mr. Lawlor's employment with the company and Mr. McDermott's. I was not sure about Mr. Boester.

I said we will have to confront all three of these people with the information that we have. I said I can't believe -- I will quote what I said at that point, "I cannot

believe this about Mr. Lawlor."

Mr. Lawlor had had my absolute confidence, trust, and absolute loyalty from the very beginning.

Q Did you in fact hire Mr. Lawlor?

A Pardon?

Q Did you in fact hire Mr. Lawlor?

A Yes, I did hire Mr. Lawlor.

Q After you received the report, did you call for a meeting?

A I said that I would like a meeting immediately set up with these people.

Q Who was invited to the meeting?

A Mr. McAward, Mr. Davis, Mr. Jones, and of course myself and then Mr. McDermott, Mr. Lawlor and then, I believe, Mr. Boester.

Q There has been marked in this case as Exhibit 32 certain statements attributed to you, Mr. Judelson, that were taken from a verbatim transcript of what occurred at that meeting.

Would you be good enough to look at Exhibit 32? Can you testify if you made the statements that are atrributed to you?

A Can I do what, sir?

Q Can you testify whether or not you made the state-

ments that are atrributed to you in Exhibit 32?

A I believe you can tell me if it's so. It looks like my words, and I guess this is the transcript of the tape that recorded the conversation at that meeting. These, I can see just from the first paragraph that that is myself talking.

Q You made these statements at the meeting. On what information were those statements based?

A Statements that I made here were based Upon the information submitted to me in this document called Exhibit No. 11, and also on the responses that Mr. Lawlor when I asked him about them.

Q Were the statements you made at the meeting true?

A Were they true?

Q Yes.

A Of course they were true.

Q Did Mr. Lawlor deny any of the statements that you made at the meeting?

A Did he deny any statements that I made?

Q Yes.

A Yes. When I told him about this whole escapade that was taking place, he said, "But, Jim, you and I discussed this."

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And I said, "We had discussed a portion of what happened here because you came to me in this meeting" -- I talked about that a year before, nine months before, "and I told you we would absolutely not do it," and I think the transcript will state that.

Q The transcript is in evidence. We needn't go into that.

Why was Mr. McAward at the meeting?

A Mr. McAward was at the meeting because he was the one who was hired by the corporation to do security surveillance. We have had in the past leaks of information, and it's just good operating business procedure. Mr. McAward has been hired in the past, and previous to this, to make certain that people in key executive positions were not inadvertently just putting information -- leaving it on their desks and things like that, and so one of the things that he was charged with was to go ahead and see if people were doing this, and if they were doing this we wanted to know about it so we could bring it to their attention and make sure that we had good security within the corporation, because especially in the several months just prior to this, there had been leaks to various newspapers and publications that came from people -- a person or persons who were only in very select meetings, and so

we knew it was only the officers of the corporation who were transmitting this information and/or from memos that they were leaving around that other people could see, so Mr. McAward, to answer your question now, was on one of his surveillance checks, and then came upon this whole situation that had to do with the Mark Group and MJL Industries and everything else.

Q Mr. Judelson, I would like to interrupt you. Can I ask you, did you have a particular reason for inviting Mr. McAward to the meeting of April 26?

A Yes, since he was the one who came up with all the information, I wanted him there in case anybody made any reference to any of this information. I wanted to have it available if in fact it was needed, and since he was the one who obtained all the information, I didn't want to have anything that could either prove or disprove the situation that might be available not present through his hand in the meeting.

Q What was the purpose of the meeting and the statements that you made at the meeting?

A The purpose of the meeting was to give each of these individuals the absolute nth degree of consideration in stating why this had taken place. Although I could see no reason, I still wanted to do it, so we had the meet-

ing, and hopefully, because I had as much confidence in Mr. Lawlor, he would be able to explain, but he couldn't explain it. In fact he really didn't want to explain it.

Q Did you consider yourself as having any duty concerning the holding of that meeting?

A Well, yes, I had a duty to Mr. Lawlor to make certain that he would be absolutely fairly treated.

Secondly, I had a duty to the stockholders of Gulf & Western, because if in fact anybody is doing anything that is a conflict of interest or is not to the best interests of the corporation, I have a fiduciary responsibility to make certain that it doesn't happen. Otherwise, the stockholders have an absolute responsibility to kick me out.

Q Mr. Judelson, did you ever see an article concerning Mr. Lawlor in the Gallagher Report?

A Did I ever see one?

Q Yes.

A I think a month or so after Mr. Lawlor left, I saw -- I think it was a month or some time after, anyway -- there was an article that came out in Gallagher's Report that waws shown to me.

Q You read the report?

A Yes, I did.

Q Have you or any person associated with Gulf &

Western to the best of your knowledge ever made any statements to Gallagher's or Billings or any person connected with Gallagher's concerning the plaintiff or the events which led up to his resignation on April 26, 1973?

A I personally have never spoken to Gallagher's about this, and I don't know of anybody who has.

MR. STEIN: Your witness.

Thank you, Mr. Judelson.

CROSS EXAMINATION

BY MR. STOLZAR:

XX Q Mr. Judelson, do you have any financial interest in any company other than Gulf & Western?

A Yes, I own stock in many companies, and I am chairman of the board of a company called Oscar I. Judelson, Incorporated that was founded in 1899 by my father, which is a personal business, family business in which I have an interest.

Q Does Oscar Judelson through its --

A That's correct, that's correct. It's also called Judelson Industries.

Q Does that company through subsidiaries or directly do any business with Gulf & Western or any of Gulf & Western's subsidiaries?

A No, sir.

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MR. STEIN: Your Honor, I object. This goes beyond the scope of direct, and it really has no relevancy to any issues in the case that I am aware of.

THE COURT: Overruled.

Answer the question.

Q Isn't it a fact that --

THE COURT: I think you have a pending question.

MR. STOLZAR: He answered it.

THE COURT: I am sorry, I didn't hear the answer.

MR. STOLZAR: He said no. I will explore it further.

THE WITNESS: Pardon?

Q Isn't it a fact that, through subsidiaries of the Judelson operation, they are suppliers to subsidiaries of Gulf & Western?

A Is it a fact that they are what? Suppliers?

Q Yes.

A Suppliers to who?

Q To Gulf and Western subsidiaries?

A That Judelson subsidiaries are suppliers to Gulf & Western subsidiaries?

Q Yes.

A Absolutely not.

Q Would you know that for a fact?

A I would be pretty certain, yes.

Q Are you familiar with all the companies with whom Gulf & Western subsidiaries do business?

A The companies at Gulf & Western do business?

Q That's right.

A Let me ask you, are you asking me if --

Q I am asking the questions.

A -- if Judelson supplies products to Gulf & Western or Gulf & Western supplies products to Judelson, which way?

Q Either way.

THE COURT: Either way.

Did any of your subsidiaries of Judelson do business with Gulf & Western or any of its subsidiaries, either way?

THE WITNESS: They do not do business. Through some of their distributors they may do a thousand or two thousand dollars from Morse Twist Drill, which is a company, but I don't know if they do it.

Your Honor, could I please just state this? I believe what is being tried to show here, and I know this from the depositions, that I also have a conflict of interest, and that Mr. Lawlor did not, through the Mark Group,

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and that there is a correlation.

The facts of the matter are that my interest in Judelson Industries is known to the board of directors of Gulf & Western, it has been printed repeatedly in proxy statements that go not only to the stockholders of Gulf & Western, it also has been registered with the Securities and Exchange Commission in Washington. It is known by every single official within Gulf & Western at the top.

There is absolutely no conflict of interest. This company does not compete with Gulf & Western. It does not supply products to Gulf & Western, and my entire relationship with Judelson Industries is totally known and outlined in the proxies, and you cannot, no matter how you try, sir, equate this to an unknown entity of which there was an absolute conflict of interest. And I would be very happy, your Honor, to tell you what the difference is.

THE COURT: Sir, why don't you leave that robe to me and just see if we can get the testimony here.

THE WITNESS: Fine.

THE COURT: That may be one of my problems.

Q Do these proxy statements and all these fine instruments filed all over the world to explain what happens inside of Gulf & Western and its subsidiaries also contain information concerning a couple of subsidiaries of

Gulf & Western through whom one Joel Dolkart is alleged to --

MR. STEIN: Your Honor, I am going to object. It has nothing to do with this.

THE COURT: Sustained as to form.

MR. STEIN: He is just trying to embarrass the witness.

THE COURT: Please, I said sustained as to form of the question.

Reframe it.

Q Was there anyone else at Gulf & Western, during the period from 1968 through 1973, that was guilty of a conflict of interest, to your knowledge?

A Guilty of conflict of interest?

Q Yes.

A To my knowledge, no, sir.

Q Was Joel Dolkart on the payroll of Gulf & Western or any of its subsidiaries during the period that I have just asked you about?

MR. STEIN: Your Honor, I object on the grounds of relevance. There is no issue in this case concerning Joel Dolkart.

THE COURT: I assume it's made with a view to offering some proof. On that basis I will accept the question.

MR. STEIN: Your Honor, may I just make a statement?

There is pending inthe District Attorney's office for New York County an investigation of the Joel Dolkart matter, and I am uncomfortable as a lawyer for the company having any statements made by Mr. Judelson on the public record concerning a matter that is under scrutiny by the DA's office.

THE COURT: That is certainly no ground for asserting some kind of privilege.

Answer the question.

A I will answer the question.

Mr. Dolkart was general counsel for Gulf & Western. He was a partner of Simpson Thacher, and he did also have a salary from Gulf & Western.

Mr. Dolkart, according -- and this I can state absolutely because it's a matter of public record and news release -- the partners of Simpson Thacher advised Gulf & Western that Mr. Dolkart was extorting funds from their firm from fees that were paid by Gulf & Western and other firms to Simpson Thacher. They had asked for his resignation and received it.

Immediately upon receipt of this information, Gulf & Western demanded and received Mr. Dolkart's resigna-

tion, and the matter is now before the District Attorney.

THE COURT: I don't see that that bears on this at al. He is only an employee of Gulf & Western with a conflicting interest, whatev er it may show as to Simpson Thacher.

Q The question I want to ask is whether or not Mr. Dolkart, as general counsel to Gulf & Western, had anything to do with the drafting of the employee conflict of interest policy?

THE COURT: Sustained. So what? What difference does it make.

MR. STEIN: Thank you.

Your Honor, I wonder if we could expedite the cross-examination, because the court day is ending, and Mr. Judelson has to be out of town tomorrow.

MR. REINER: I have a few questions myself, your Honor.

THE COURT: I am doing all I can to expedite it.

MR. STOLZAR: We are too, your Honor.

THE COURT: Preparation helps.

Go ahead.

MR. STOLZAR: YOur Honor, this document was not presented till yesterday.

THE COURT: Well, it should have been produced

in examinations before trial months ago. 288A

MR. STOLZAR: We tried to obtain it, your Honor, but we were not able to do so.

THE COURT: You never came to me with any appl ication to get it, or you'd have had it. Anyway, proceed.

MR. STOLZAR: I am sorry, your Honor, we did have an application before the Magistrate.

Q Were you aware, Mr. Judelson, of the statement in Mr. McAward's report of April 24, 1973 that said:

"Our work to date is still not completely conclusive of the conflict of interest problem. Absent a confrontation with Lawlor, it is possible to conclude that their course of conduct is innocent. Moreover, careers are involved that could be seriously injured if action is taken before all of the facts are developed."

Were you aware of that?

A Yes, sir, I was.

Q And that was the reason you called this meeting?

A Yes, it is.

Q And you started the meeting with Lawlor with an open mind?

A I certainly did.

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Q And you started the meeting with Lawlor with an open mind, and you said to him, "Mat, I 've got to start this conversation by saying that I've placed a lot of confidence in you, and I don't think it was reciprocated, but I want to tell you something, that we'll soon find out that it was not reciprocated. You should not be surprised that people you had confidence in have not shown the same type of reciprocation to yourself, if you can understand what I just said?"

That was your opening statement to Mr. Lawlor, and that, you say, indicates that you had an open mind, and that you were then seeking to determine facts from the meeting with Lawlor?

MR. STEIN: Your Honor, I object. The purpose --

THE COURT: Sustained.

MR. STEIN: The tape transcript shows --

THE COURT: I sustained it. Do you want to keep on arguing? You might change my mind. Quit when you are ahead.

Q During the course of your operation of Gulf & Western, did you have occasion to ask Mr. Lawlor to out-place any employees or executives of Gulf & Western?

A Out-place? What do you mean out-place?

THE COURT: Get them a job somewhere else.

THE WITNESS: Pardon?

Well, no, I'd ask Mr. Lawlor to help the people get other jobs, yes.

Q Did you follow up with Mr. Lawlor after those requests?

A I think sometimes I may have said to him, "Have you placed this man with a proper agency?" And that is what I meant by helping him get another job.

I want to make it clear there was never ever any thought, nor was there ever -- would anybody ever think that out-placing would mean that this company, Gulf & Western, to advertise to help a man get a job, to actually go ahead and send out resumes by the corporation, leave alone any other corporation that we knew about or didn't know about, to get the man a job.

What is in the spirit and sense of what I would say is out-place was purely help the man write up a resume. We are supposedly professional at that, and put him with a good management placement service.

In other words, call them up, tell them this man is looking for a job, can they be of help to him. That is it. That is all we have to do to help an employee. We are not chartered under anything to go ahead and spend dollars to go ahead and place an employee, and no corpora-

tion in the United States would do otherwise, more or less than that.

Q Is that what you told Lawlor?

A Pardon?

Q Is that what you told Lawlor?

A Mr. Lawlor is a vice-president of the corporation. He would know that.

Q It was within the scope of his duties to make those decisions as to how to go about out-placing a man?

A If Mr. Lawlor wanted to advertise, he would have to get permission, and he never got it, and he never requested it.

Q Did he advertise?

A I don't know if he did or not.

Q Did Mr. Lawlor have to report to you every time he received $3000 into the compny?

A Mr. Lawlor would have to report to me every time he received $3000 into the company?

Q That's ri[illegible].

A Well, since Mr. Lawlor was not a profit center, I do not believe that he would ever receive aw check for anything except his own salary.

Q Did he have to report to you on any expenditures?

A Yes, he would always give me, as every officer

does that reports to me, a personal expense account, so if Mr. Lawlor made a trip to a certain city, he would then have to put it down on an expense account form and give it to me for okay.

Q How often did you meet with Mr. Lawlor during the course of his employment?

A Periodically. Sometimes maybe every week, sometimes once a month, sometimes maybe not for two or three mo nths.

Q And he was the top employment person in the company?

A He was the top employment person in the company.

Q And you expected that he would exercise discretion and would not bother you with trivia or even important matters; is that right?

A Absolutely right.

Q Did you ask Mr. Lawlor to out-place Mr. Yaeger?

A Yes, I did, I asked him to help him, if he could get with a management placement agency that he knew were very credible firms so that it would help him get a job. Exactly right.

Q Did you use those words, "Go to agencies with Yaeger"?

A Mr. Lawlor, I have discussed this in the past.

In fact, one of my favorite firms is --

Q Please, Mr. Judelson, we are trying to get through today. Would you answer specifically as to Mr. Yaeger?

A About the conversation with Mr. Yaeger on --

Q Yes, sir.

A The answer to that, I don't know, I don't remember.

Q Did you ask him to out-place Mr. Boester?

A I didn't ask him to out-place Mr. Boester. I told him that Mr. Boester was not, as far as everybody was concerned, doing his jo.. in a professionsal way as the corporation would like. Mr. Boester was not a young man. He was a fairly old man. I said, "Mat, it will be very difficult for this man to find another job. You will do yourself a favor if you don't have this man working for us because he is not up to what I would think would be the highest professional standards that you would have. Therefore, take as much time as you want, but see if you can't find this man another job, maybe having him go with a management placement service, but tell him too to start looking for another job, because he should eventually get another job, and he should not be with this company."

That is exactly in so many words what I told Mr. Lawlor. And incidentally, eight or nine months later he was still with the company.

Q Did you have any personal contact with Mr. Boester prior to those conversations with Mr. Lawlor about having Boester leave Gulf & Western?

A With Mr. Boester?

Q Yes.

A Not -- I do not believe I did. I think my whole discussions about Mr. Boester were with Mr. Lawlor.

Q But you never met the man personally before that?

A Oh, of course I did. I didn't talk about his leaving the company when I met with him.

Q I asked you whether you met with him personally.

A Oh, yes, yes.

Q How frequently did you meet Mr. Boester personally?

A Over the course of the years, maybe a dozen times, something like that.

Q Did you discuss this position in the company with Mr. Boester?

MR. STEIN: Your Honor, I object on the grounds of relevance.

A The answer to that is I do not believe I did. In fact, I am almost certain I didn't.

Q Did you give Mr. Boester a letter of recommend-

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ation to his present employer?

MR. STEIN: Your Honor, I object on the grounds of relevancy.

THE COURT: Overruled.

THE WITNESS: Am I supposed to answer that? I didn't hear, I am sorry.

THE COURT: Yes.

Did you give him a letter of recommendation?

THE WITNESS: I really don't remember. If he asked for it, I certainly would have. I don't know if he asked for it, but I would be very happy to have done it, yes.

Q You would be very happen to give this man who --

THE COURT: That is what he said.

Next question.

THE WITNESS: Yes, absolutely, sir.

Q This despite the fact that he was not performing his services for the company?

THE COURT: Sustained. Never mind.

Voice your objections out loud though so the record shows it. Otherwise it looks as though I am doing the objection.

Q Do you recall the April 26, 1973 meeting with Mr. Lawlor, you said:

"So you had this whole idea -- that this would be done. If in fact you had all, that whole idea, Mat, why didn't you do it under Management Resources?"

MR. STEIN: May I have the page, please, of the transcript you are reading from?

MR. STOLZAR: 13.

MR. STEIN: Your Honor, as a courtesy to the witness, may we hand him page 13?

THE COURT: Yes, sure.

MR. STEIN: Mr. Stolzar, would you indicate where you are reading from?

THE WITNESS: You are on page 13?

MR. STOLZAR: Next to the last D.J. statement (indicating).

Q You did make that statement, didn't you?

A Pardon?

Q You did make that statement, didn't you?

A Yes, that's my statement.

Q Where did you learn the name Management Resources?

A Management Resources, as I told you before, was a catchall term that was used in the business planning for that department to be the catchall for the getting these management profiles of personnel within Gulf & Western or people who sent us resumes, to collect all of

this under what was called Management Resources. It was a term, and it's in our business plans. It's there to see.

Q Is it anywherein the McAward report?

A I really don't know. If it is, it is; and if it isn't, it isn't.

Q Was Management Resources suppoed to out-place employees of Gulf & Western?

A Absolutely not, in the connotation of doing anything other than placing employees that were going to be going out of Gulf & Western with these management firms, to see if they couldn't help them place these people, so they could quickly get another job.

Q If they weren't suppose to do that kind of work, why then did you ask Mr. Lawlor why he didn't do this under Management Resources?

A Why he didn't do this under Management Resources?

Why don't you go back up to the top of the page and read what made me say that. Mr. Lawlor had already stated, because I remember the conversation very well, that he was doing Gulf & Western a big favor by doing this outside of the company unbeknown to the company, setting up bank accounts unbekown to the company, and then after it was really flying high, he was going to bring it back into

the company, into Gulf & Western.

I said, "Well, why do it through that whole thing like that, Mat? Why didn't you do it right here, if you thought that was right?"

It was in response to exactly that conversation.

Q That was the conversation?

A Furthermore, Mr. Lawlor also stated at that time that he was also doing it so that personally he oculd help his own taxes. How do you equate that to taking a company that Gulf & Western owns outside and then bring it back?

Q Is that your recollection of what you said at the April 26th meeting?

A You better believe it. If you read the transcript, you will find it there.

Q Would you find it for me?

A Well --

MR. STEIN: Your Honor, the transcript of the tape is in evidence. The verbatim transcript is available for all to see. I don't think that there is any purpose to be served in examining the witness on this transcript.

THE COURT: We will take the witness. He said he did. If he reads it so readily there, he ought to be able to tell us.

MR. STOLZAR: It's not there. That is why I have asked the witness.

THE COURT: I assumed that.

THE WITNESS: If you will give me enough time, and if you stay here --

THE COURT: How much time do you want?

THE WITNESS: If you will stay here, I will find it for you, because I know I said it. It's on the tape.

THE COURT: It is my lot in life to stay here long.

THE WITNESS: I work long hours too, your Hnor.

THE COURT: The only trouble is you aren't my only customer. I have more back there.

THE WITNESS: Your Honor, first of all, I'd like to just go to the next page, which is page 14. After that statement that he brings up in which I said, "Why didn't you do it under Management Resources" --

MR. STOLZAR: Your Honor, I object.

THE COURT: No, I think it's responsive. You asked him why. He can talk for three years and be responsive.

MR. STOLZAR: The last question I asked him, your Honor --

THE COURT: I heard what you asked him.

Go ahead.

THE WITNESS: Well, the next statement, your Honor, says -- I will read the statement he refers to:

"So you had this whole idea -- that this would be done. If in fact you had all, that whole idea, Mat, why didn't you do it under Management Resources?

"MAT LAWLOR: (Unintelligible mumbling.)

"JUDELSON: Why didn't you do this thing under Management Resources? If you needed funds to do this, why didn't you come to me and say, 'I'm doing this --

"MAT LAWLOR: Well, now, wit a minute, Jim, I went to you and said I was going to try to work some things out. Now I haven't had a chance to talk to you about each and every thing I did, but -- I think that, and you say of who relies on who. I know one thing, I relied on you to have faith in me because most everything I've ever tried to do is in that one direction --

"JUDELSON: (Interrupting) Mat, the fact is that you did come to me and say how about setting up, A, a Management Resources, and I said to you, 'No way, Mat.' If you remember that.

"I said, 'I'm not interested in that.' You

don't remember that?

"LAWLOR: Oh, no.

"JUDELSON: Oh, yes I did, I said if you want to set up a Management Resources, as an internal situation so that you can go ahead and have a name for a group coverage of all the various people that right in here, I said, 'Go ahead and do that, but no Corporation, I'm not interested in fees or anything like that.'

"You recall that, do you not?

"LAWLOR: Well, Jim, I don't know about the no Corporation.

"JUDELSON: But in any event we did have a Management Resources here, Mat, so why didn't we just continue with that?

"LAWLOR: Well, for the simple reason some of these thing has has been handled in the outside is what I'm saying, Jim, and it wasn't.

"JUDELSON: Mat, since I told you that I wasn't interested in that, why on your own were you setting this up, getting money put in there, having an employee of Gulf & Western by the name of McDermott as a registered check signing name at the bank, right? What's the name of the bank?

"MR. McAWARD: Union Trust.

MR. JUDELSON: Yeah. Why did you have all these things done without discussing, don't you think that's there's something wrong here, Mat?"

Page 15 --

MR. STEIN: Go to page 16.

THE WITNESS: Go to 16?

MR. STEIN: Yes.

THE WITNESS: What happened to 15, no 15?

MR. STEIN: There is no 15.

THE WITNESS: Okay, it reads on here:

"Why did you do all these things with out discussing, don't you think that there's something wrong there, Mat?

"LAWLOR: I would had like to discuss the whole thing with you, sure.

"JUDELSON: You didn't.

"LAWLOR: Jim, I frankly, I, it was when I, because it was all --

"JUDELSON: Monahan knows nothing about this?

"LAWLOR: No.

"JUDELSON: Why do you have, why then in your thinking and in your plans is Monahan a key person in this to take care of New Jersey and New York, Mat?"

This goes on about all the different people he had on there. I was trying to make sure they weren't involved in this clandestine operation.

If I will go on with this, as I recall, he then gets into his own taxes. If you want it, I will get it for you.

THE COURT: I am afraid we have to adjourn.

MR. STOLZAR: Your Honor, I am finished with this witness at this point.

MR. REINER: May I just ask one question, your Honor?

THE COURT: One.

MR. REINER: I promise you it will only be one.

CROSS EXAMINATION

BY MR. REINER:

Q I show you a copy of the May 22nd issue of the Gallagher Report, and draw your attention to page 2, the article,"'Charlie Wonderful' Bluhdorn cracks down on executives."

Take a look at it, please, and read it.

A Excuse me, your Honor, I got it.

THE COURT: All right, go ahead.

THE WITNESS: "What about, what's MJL Enterprises?

"LAWLOR: That's something I just developed.

"JUDELSON: Why would you develop that, Mat?

"LAWLOR: Just a concept to see if, you know, some day I might put something to gether along these lines. I'll tell you frankly, it was in the hope that if I had any outside income, that with my, with My present tax sitution, that I would at least have a basis for a Schedule C,"

which means on the first $25,000 you get a special tax credit if you don't take it personally.

"JUDELSON: You don't feel, Mat, that there's any conflict of interest between your getting resumes here and giving them to thr Mark Group, and having them place the people and getting a fee? Right?

"LAWLOR: No, Jim, I never looked at it, that way --

"JUDELSON: You didn't look at it that way?

"LAWLOR: In other words --

"JUDELSON: You didn't look at it that way?

"LAWLOR: In other words --

"JUDELSON: In other words, th 9000 fee that was paid there, to that company, right, you don't feel that there was any conflict of interest for any of the people who were working here, whether it was

McDermott or yourself?

"LAWLOR: I didn't feel that, no, I didn't.

"JUDELSON: "You didn't. No well -- in other words --

"LAWLOR: In fact --

"JUDELSON: The $9000 fee was purely going to be for Markham, right?

"LAWLOR: And to operate that, that total company with the idea that then we would have total utilization of that company from within here."

In other words, he was going to bring it in. My recollection is total.

Now let me tell you something, sir: The $9000, if he could get a split fee back from somebody, should have come to Gulf & Western, not to an outside company. It was taking money from the stockholders of the corporation. It's the same thing as when somebody goes into the bank and takes $8000 that doesn't belong to them.

THE COURT: We have got another pending question now, Mr. Judelson.

BY MR. REINER:

Q Would you please read this article in Gallagher's Report, and I point this out to you, and tell me whether

it is a true and accurate statement, substantially true and accurate.

A The statement is substantially true except that it states that:

"Charlie Wonderful" Bluhdorn cracks down on executives. I don't know that Mr. Bluhdorn is wonderful, but he -- basically the statement is incorrect from only the standpoint that I did it. I discussed this with Bluhdorn the day before this meeting and told him what was going to happen, and whether Bluhdorn did it if I didn't do it, Bluhdorn would have had to do it. Since Mr. Lawlor worked for me, I did it, but the statement is totally true.

MR. REINER: Thank you, sir.

No questions.

MR. STOLZAR: May I ask one question on that item? And that is it.

THE COURT: All right, one.

BY MR. STOLZAR:

Q Is it true that Lawlor extracted fees for the placement of executives with Gulf & Western?

A Is it true that Lawlor extracted fees --

Q For the placement of executives with Gulf & Western?

A Is it true that he did?

Q Yes, sir.

A Well, the fees that were extracted --

Q Please just answer the question yes or no.

A I'd have to know the people that were involved.

THE COURT: Anybody.

THE WITNESS: There were some people placed with Gulf & Western. There were people placed by the Mark Group while Mr. Lawlor --

THE COURT: The question is clear enough.

THE WITNEWS: The answer to that, your Honor, is I don't know. I'd have to -- if they tell me --

THE COURT: All right, he doesn't know.

Next question.

MR. STOLZAR: No further questions, your HOnor.

MR. STEIN: You may step down.

THE WITNESS: Your Honor, could I make one statement to you or not?

THE COURT: No, I don't think so.

THE WITNESS: Okay, fine.

MR. STEIN: There are no questions.

THE COURT: Not that I don't like to hear you talk. But this is an adversary system. Let your lawyer do it. He gets paid for it, presumably.

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All right, we will recess now until tomorrow morning at 10.30

(Trial adjourned to 10.30 a.m., Thursday, October 24, 1974.)

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mbbr 1

Matthew J. Lawlor

v. 73 Civ. 5443

The Gallagher Presidents Report Inc., etc., et al.

NEW YORK, NEW YORK

OCOTBER 24, 1974
10:30 a.m.

- - -

(Trial resumed.)

- - -

THE COURT: I wonder if counsel could give me some estimate of how much longer they expect to take in this case.

MR. STOLZAR: Your Honor, I may have approximastely thirty minutes of cross examination of Mr. McAward, and from there on in it depends upon the direct testimony of the rest of the defendnts' witnesses.

We may have ten or fifteen minutes rebuttal.

MR. STEIN: Your Honor, as I recall from yesterday, Mr. Rudell was going to be recalled for the plaintiff.

Is that still your intention?

MR. STOLZAR: I don't see any necessity for it at this point.

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MR. STEIN: We had asked for a memorandum.

MR. STOLZAR: Right. To that extent he is your man.

THE COURT: He just asked for the production of a memorandum. Do you have it? Come on.

MR.STOLZAR: We have a memorandum and we have a letter, other letters to Gulf & Western or people there so we are ready to produce whatever they ask for.

THE COURT: How many more witnesses do you have?

MR. STEIN: Your Honor, I have just two witnesses here and they are going to be very brief, I can assure you.

THE COURT: How aboutyou?

MR. REINER: One witness, your Honor. About half an hour.

MR. STEIN: Your Honor, I think we should have had an opportunity to cross examine Mr. Rudell on these documents.

THE COURT: Have you seen them?

MR. STEIN: No, I haven't.

THE COURT: Produce the documents. Then decide whether you want to cross examine him.

Meanwhile let us put the witness we have on

the stand here.

All right, Mr. McAward, come up.

J E R E M I A H P. M c A W A R D, resumed.

CROSS EXAMINATION (Continued)

BY MR. STOLZER:

Q Mr. McAward, what was your specific assignment at the time you happened to discover the Lawlor papers?

A My specific assignment was to determine if possible the source of leaks of intra-corporate information to outsiders, the media, newspapers, including the Gallagher Presidents Report.

Q When you were retained for this special assignment, what specific instructions were given to you by Mr. Davis?

A I don't recall what they were specifically except that I was to see if I could find the source of the leaks.

Q Did Mr. Davis single out the Gallagher Presidents Report as a media to whom leaks were to be found?

A It was mentioned. It was not singled out. Mentioned among newspapers, magazines, and the Gallagher Report.

Q Did Mr. Davis direct you to look into the

offices of particular persons in the company?

A No, sir, he left that up to me.

Q How did you decide whose offices to examine?

A I didn't, sir. I started with Mr. Bluhdorn and worked down. I hit them all.

Q When you hit them all, whose offices did you hit?

A Mr. Bluhdorn's, Mr. Judelson's, Mr. Davis', Mr. Abbott's, Mr. Forson, all the executive offices on the 42nd floor, and I started to go down through the company roster through the vice presidents' offices and their surrounding area.

Q And you did this all after hours?

A Yes, sir.

Q Did you go through the desks of Mr. Bluhdorn, Mr. Judelson, Mr. Davis?

A I went through the office and did not open any locked desks, went through secretarial areas.

THE COURT: Did you go through any desks in those offices? The question is straight. Give a straight answer.

A No, sir.

THE COURT: Did you?

THE WITNESS: No, sir.

Q Were you retained in anticipation of litigation?

MR. STEIN: Your Honor, I object.

THE COURT: Overruled.

A I don't believe so, sir.

Q Did you maintain a diary of the time you spent on the security search?

A Yes, sir.

Q Do you have tha diary here?

A No, sir, when I submitted the bill I didn't need my notes any longer.

Q How much time did you spent on the security search?

A 85 to 125 hours. I am not sure. I don't really remember what the bill was. I could work back from that.

THE COURT: Are you still retained from time to time by G&W to do this kind of work?

A Yes, sir.

Q Did you find the source of the leak?

A I don't know, sir.

Q Did you draw any conclusions as to who might be the source of the leak?

A No, sir.

THE COURT: What did this leak have to do with? Did it have anything to do with the subject matter of

this litigation?

A No, sir, I don't believe it did.

Q When you found it --

THE COURT: So I take it you just did some snooping on your own into other areas that weren't assigned to you; is that right?

A No, sir, I came across this, and I --

THE COURT: You came across it in somebody's desk?

THE WITNESS: No, sir, it was in the trash basket.

THE COURT: Some of it was in the desk, wasn't it?

THE WITNESS: Some of it was on the desk.

THE COURT: Some of it was in the desk you told me I thought in direct examination?

THE WITNESS: No, sir, I didn't go into his desk.

THE COURT: You went into file drawers, didn't you?

THE WITNESS: Yes, sir.

THE COURT: You didn't go into anybody's desk?

THE WITNESS: No, sir.

Q When you found the name Gallagher on the sheet

of paper on Mr. Lawlor's desk, did you go back to Mr. Davis and say you want to explore that situation further?

A I don't recall. I kept Mr. Davis apprised of the progress of the investigation.

Q Did Mr. David direct you then to follow through on an examination of Lawlor's records for Mark Group or Management Resources?

A No, sir. He told me to continue with the investigation.

Q This is the security investigation?

A With the investigation. I had turned up something that I couldn't explain and he asked me to cooperate with it; and I did.

Q Were you paid separately for this other investigation of Lawlor?

A I was paid for that report you have.

THE COURT: What did this matter here have to do with internal security of Gulf & Western?

Why did you pick these papers off people's desks and out of their files?

THE WITNESS: Because the first ones I found, your Honor, had the name of an organization that didn't belong to Gulf & Western.

THE COURT: What did that have to do with security?

THE WITNESS: In the overall idea of security in the organization, sir, it was their material being used for another firm, and I was asked to see if I could find out whatever was available on it, and I did.

THE COURT: What were your specific directions?

THE WITNESS: Originally --

THE COURT: What were you searching for?

THE WITNESS: Leaks.

THE COURT: Leaks of what?

THE WITNESS: Of intra-corporate information.

THE COURT: To whom?

THE WITNESS: To the media.

Q Did you have any assistance in this search?

A I had one or two of my employees with me from time to time, yes.

Q How much time did you spend on your search for Mark Group papers?

THE COURT: Did you have any bugs?

THE WITNESS: No, sir.

THE COURT: Did you bug anybody's office?

THE WITNESS: No, sir.

THE COURT: Tap their phones?

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THE WITNESS: No, sir.

The amount of time I spent on the Mark Group part of the investigation I don't really recall.

Q How much was your bill for the Mark Group report?

A Two or $3,000.

Q And what is your hourly rate?

A $25 a man-hour, sir.

Q In other words, you are telling us that you spent 120 hours on the Mark Group Search as opposed to possibly 80 or 100 hours on the security search?

A No, sir.

Q Is that correct?

A The entire investigation was not conducted at the Gulf&Western Building. It went into Connecticut and it went into New Jersey.

THE COURT: You said you were looking for leaks to the media?

THE WITNESS: Yes, sir.

THE COURT: What media?

THE WITNESS: The newspapers, magazines, including the Gallagher Report.

THE COURT: Did you find anything in that connection?

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A The only thing I found was on that piece of paper on Lawlor's desk. He had written the word "Callagher".

THE COURT: Had Davis said anything to you about leaks to the Gallagher Report?

THE WITNESS: Yes, sir, they were mentioned.

THE COURT: Did he tell you there had been leaks in the past to the Gallagher Report?

THE WITNESS: Yes, sir.

THE COURT: Who leaked, did he tell you?

THE WITNESS: No, sir, he didn't know.

THE COURT: But somebody?

THE WITNESS: Apparently, sir.

Q Yesterday you told us that you personally typed this report.

A Yes, sir.

Q Do you use the touch system of typing or the hunt and peck system?

A No, it is a combination of both, four fingers.

Q How long did it take you to type this report?

A 40 minutes.

Q You typed nine pages of reports in 40 minutes?

A Yes, sir.

Q Is that what you are telling us?

A Certainly.

Q When did you type this report?

A The morning of April 24, 1973.

Q From what time to what time?

A Couple of hours immediately preceding my arrival at Gulf & Western. I don't remember the exact time I arrived.

Q And you spent 40 minutes typing a nine-page report?

A Yes, sir.

Q And you use the hunt and peck system?

A Sir, I don't think there is anything particularly long about it. It is double spaced.

Q Did you make any errors in your typing?

A Numerous.

MR. STEIN: Your Honor, I am going to object to these questions. I don't see what relevance they have.

Q You stated yesterday that it was at your suggestion that the meeting of April 26, 1973 with Lawlor was taped?

A Yes, sir.

Q What happened to the tape after the meeting?

A I played it to make certain that it had been

properly recorded, and then I took it with me.

Q Did you play it back to the people who were present?

A At that point, I played portions of it back to make certain it had been recorded. They did not hear the entire tape at that time.

THE COURT: Did anyone in the group advise Mr. Lawlor that this discussion was being taped?

THE WITNESS: No, sir.

THE COURT: The other three of you knew it?

THE WITNESS: Yes, sir.

Q When was the transcript of this tape first made?

A This year. I don't remember the exact date. It may be on the transcripts that we have supplied.

Q Who made the transcript?

A My secretary.

Q Was your secretary present at the meeting?

A No, sir.

Q Where was the transcript made?

A In my office at 420 Lexington Avenue.

Q Did anybody else in your office read the transcript after it was made?

A I did.

THE COURT: How many people in your office at that time?

THE WITNESS: Four or five, sir, inside.

Q Was the transcript made on the same typewriter as your report?

A Yes, sir.

THE COURT: How big an office was this?

THE WITNESS: It is a four-room office, your Honor.

THE COURT: Everybody have access to your office?

THE WITNESS: Yes, sir.

Q I show you Plaintiff's Exhibit 14 in evidence. Is the top page the document on which you saw the name Gallagher?

A It looks like it, sir.

Q Is that the exact piece of paper on which you saw the name Gallagher?

A Sir, I couldn't tell you if it was the exact piece of paper. It looks like it. I made a Xerox copy of the exact piece of paper.

Q Where did you make that Xerox copy?

A In the photocopy room on the 36th floor of the Gulf & Western Building.

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Q Did you ask Mr. Lawlor about the name Gallagher on a piece of paper which you found on his desk?

A No, sir.

Q Did you ask anybody in the Gulf & Western organization about the name Gallagher as you found it on Mr. Lawlor's desk?

A Yes, sir, I mentioned to Mr. Davis that I had found a piece of paper with the name Gallagher on it and I didn't think they had an employee named Gallagher.

Q Did you go through the employee roster to see if there was a name Gallagher on that roster?

A I don't recall. I think I probably did.

Q Did you or didn't you?

A Sir, I don't recall.

Q Did you go through 170 odd thousand names of the employees of Gulf & Western and their subsidiaries to determine whether there was a Gallagher anywhere in the organization?

A No, sir, my search did not go that far, no.

Q Did you look at the rosters of any of the subsidiaries of Gulf & Western?

A I went through the corporate directory which I believe was published for in-house use.

Q Did that director include the roster of

Famous Music Company?

A I do not recall, sir.

Q Did you see the roster of Famous Music Company?

A If it was in that directory I probably would have gone through it if it was in the alphabetical directory.

Q Did you know at that time that a Mr. Gallagher was the president or former president of Famous Music Company?

A No, sir.

Q Did Mr. Davis tell you that?

A No, sir.

Q Did you ask Mr. Jones who Gallagher was or whether there was an employee by the name of Gallagher?

A No, sir.

Q Mr. McAward, I again show you Defendants' Exhibit No. 11, with a sheaf of green pages attached to it, and ask you where you found those?

A In the waste basket in Mr. Lawlor's office.

Q Nice and smooth and --

A No, they were more wrinkled. I flattened them out.

Q How did you flatten them out?

A Put them in a book. They were only discarded in the wastebasket. They weren't very, very much more wrinkled than they are now.

Q These are the original ones that you pulled out of the wastebasket?

A Yes, sir. There are some stains on it, coffee, I believe, that would indicate that it was discarded.

Q You are sure it is coffee?

A No. Looks like it.

Q You are referring to the brown stain on the back of one of the pages?

Mr. McAward, where were the originals of these handwritten notes that are attached to your report?

A On Mr. Lawlor's desk.

Q In individual separate sheets of paper?

A No, they were probably on a pad.

Q I want to know where they were, not where they probably were.

A Sir, I don't remember if they were still attached by the elastic that is usually on a pad or if they were separated. They were on -- they were stacked like this.

Q You are pointing to Plaintiff's Exhibit No. 16?

A Yes.

Q If they were in a pad like Exhibit No. 16, what did you do with the pad?

A I picked up the pad and I looked at what was written on it.

Q Did you look at each page?

A Yes, sir.

Q Did you copy each page?

A The pages that I thought were important, yes, sir. I believe I did. I might have copied every one of them.

Q What did you do? Did you copy every one of them or didn't you?

A I believe I copied every one of them.

Q You believe you copied every one of them?

A Yes, sir.

Q And there was an important matter on every one of those pages; is that what you are saying?

A I didn't know how important it would be later, sir. I wanted to make certain I didn't lose it since I had found this piece of information; so I copied -- I believe quite honestly every sheet.

THE COURT: I have borne with this quite a while. I don't see what in the world it has to do with this libel action. Could you enlighten me?

MR. STOLZAR: Your Honor, the documents that

are in evidence are contained in this report. I just want to know how they got into individual sheets when they were in a pad still attached in original form in the possession.

THE COURT: I see what you are trying to do but I am asking you why does it matter? How is it material here?

MR.STOLZAR: Is there other notes, yourHonor, other than those brought in by the defendant on their exhibit, the single sheet exhibit, which have reference to the Mark Group and to talking to Judelson and others? I merely wanted to call it to your attention and to the witness' attention. I have no further questions of this witness at this time.

MR. REINER: No questions, your Honor.

MR. STEIN: Just one or two questions on redirect, your Honor.

REDIRECT EXAMINATION

BY MR. STEIN:

Q Mr. McAward, I believe you testified yesterday that you had three copies of this report, that is you issued three copies of the report?

A Yes.

Q Can you tell me what was done with each copy?

A Yes,sir. I still retained one copy. I took two

copies with me to Gulf & Western. I gave one to Mr. Davis; I gave one to Mr. Bluhdorn. I took it back from Mr. Bouhdorn and gave that other copy to Mr. Judelson. so Gulf & Western had two copies, Judelson and Davis I assume still have the copies or counsel does, and I still have the file copy of the report.

Q Were there ever more than three copies extant at any time?

A I did not make more than three copies.

MR. STEIN: I have no further questions.

THE COURT: You don't know how many times it may have been copied after you handed it to Judelson or Davis?

THE WITNESS: They assured me that it had not been copied.

THE COURT: I didn't ask you what they said. You don't know from your own knowledge?

THE WITNESS: No, I don't.

THE COURT: Whether there were a thousand copies?

THE WITNESS: No, sir.

(Witness excused.

THE COURT: Next witness.

MR. STEIN: Your Honor, could we have

Mr. Rudell finish his cross examination now?

THE COURT: All right.

R I C H A R D I V E S R U D E L L, resumed.

THE COURT: You are still under oath, Mr. Rudell.

THE WITNESS: Yes, your Honor.

CROSS EXAMIATION (Continued)

BY MR. STEIN:

Q Mr. Rudell, you testified on direct examination yesterday that you had a meeting with Mr. Jones; is that correct?

A That is correct.

Q And I believe you also testified that at that meeting you offered Mr. Jones the money that was in your bank account concerning the Mark Group; is that correct?

A I offered to return the money to him and that that was Mr. Lawlor's wish.

Q And where were you when you made that offer to Mr. Jones, in Mr. Jones' office?

A I believe in his office. I think also on the telephone.

Q When was the first time you made this offer to

Mr. Jones to return the money?

A I can't answer that because I cannot recall the exact date.

Q You don't recall?

A No.

Q Do you recall --

A But I am a member.

Q Do you recall what you said to Mr. Jones when you made this offer that you say you made?

A Just what I just said.

Q What did you say to him?

A "This money belongs to Gulf & Western and we don't want it. Mr. Lawlor doesn't want it."

Q And you were in Mr. Jones' office when you said that to him?

A I believe so.

Q What did Mr. Jones say?

A Mr. Jones said that he absolutely wants to -- does not want the money, the company does not want the money.

Q That's all he said?

A Well, other things that were said, of course.

Q What else did he say?

A I think we also discussed --

Q What did he say, Mr. Rudell?

A I am trying to recall it for you, Mr. Stein. He said he wanted back certain warrants that Mr. Lawlor had received, and we had some correspondence about that.

Q What else did he say, if anything?

A That he is persona non grata at Gulf & Western, they don't want to hear any more about him.

Q Anything else?

A That he had a wonderful family, and he was sorry for -- he thinks Mat's a wonderful fellow but he is sorry for his family.

Q Didn't you testify yesterday that he called Mat a goddam son of a bitch?

A Yes, I did.

Q Did he?

A Yes.

Q Mr. Jones said that?

A Yes.

MR. STEIN: I have no further questions.

MR. REINER: No questions, your Honor.

THE COURT: Next witness.

(Witness excused.)

MR. STEIN: Mr. Davis, please.

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M A R T I N S. D A V I S, a defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEIN:

Q Mr. Davis, would you briefly describe your relationship to Gulf & Western?

A Yes. I am a vice president of the company, director of the company, in charge of corporate administration, including security matters.

THE COURT: How long have you been with them?

A I have been with the subsidiary of the company since 1966. A director since 1967 and in the company since 1969.

THE COURT: With the parent since '69?

THE WITNESS: Since '69, correct, sir.

THE COURT: What subsidiary were you with before you came with the parent?

THE WITNESS: I was executive vice president of Paramount Pictures Corporation.

Q How long have you been with Paramount, Mr. Davis?

A Since February of 1958.

Q In 1973 did you ask Mr. McAward to conduct some

kind of an investigation?

A Yes, sir.

Q What did you say to him?

THE COURT: Before we get to that, how many subsidiaries does Gulf & Western have and what are they?

THE WITNESS: We have eight operating groups, sir, which encompass approximately --

THE COURT: I just want the names. Paramount and?

THE WITNESS: We have Paramount.

THE COURT: Jersey Zinc, who else?

THE WITNESS: New Jersey Zinc, Brown Paper Company, APS, Inc., Gulf & Western Manufacturing Company, Brown Company, Consolidated Cigar Corporation, Association Corporation of North America.

THE COURT: What were its assets, Gulf & Western, in 1973?

THE WITNESS: Approximately $2 million. 2 billion, I am sorry.

THE COURT: 2 billion?

THE WITNESS: 2 billion.

Q Mr. David, I asked you whether or not you asked McAward to conduct any kind of investigation in 1973.

A Yes, sir.

Q For what reason?

A We had a number of leaks which we believed were coming from the offices of Gulf & Western to various magazines, publications including the Gallagher Report, I believe Business Week was another one, and others, I don't recall exactly who they were. This was on a persistent basis which we felt were harmful to our best interests. Some of it had a great measure of confidentiality which were harmful to shareholders, to other employees, as well and we felt it was our best interests to find out --

Q What did you ask Mr. McAward to do specifically concerning this investigation at the outset?

A I asked Mr. McAward in addition to his regular functions with us to see if he could find out where these leaks were emanating from.

Q Did you receive a report from Mr. Mc Award?

A I received periodic reports from him, yes, sir.

Q Did there come a time when you received a written report from Mr. McAward?

A Yes, sir.

Q What resulted upon the receipt of that report,

if anything?

A The report that he received from Mr. McAward concerning the Mark Group and Mr. Lawlor and Mr. McDermott's activities indicated to him and to me that we had operating within our own personnel organization an outside company which had no affiliation with us· a group called the Mark Group that was engaging in personnel activities totally unrelated to Gulf & Western. It was not part of this company, we had no idea what it was. I was asked if I knew about it. I never heard of it, didn't understand it, and obviously it was my duty to ask him to proceed and get me any information he could.

Q When you originally insturcted McAward to inspect the security of the building,were you concerned at all about any activities of Lawlor or McDermott or an in-house placement firm?

A No, sir.

Q What,if anything, did you decide to do on the basis of McAward's report?

A I decided to discuss it with Mr. Judelson after talking it over with Mr. McAward; and to see if there was anything in here that was just totally untrue and frankly my own impression was I couldn't understand it and I didn't frankly believe it. When I say I didn't believe

it, I didn't believe that this kind of thing could happen or that it was going on and I wanted to know more about it.

Q Did you conclude that a meeting ought to be held?

A Yes, we did.

Q Did you attend a meeting?

A Yes, sir.

Q Who else was at the meeting?

A Mr. Judelson, Mr. Jones and Mr. -- myself and Mr. McAward.

Q When was the meeting held?

A The 26th of April 1973.

Q Where?

A In the conference room on the 42nd floor of the Gulf & Western Building.

Q You made some statements at the meeting, didn't you, Mr.Davis?

A I believe I did.

Q On what information were your statements made?

A Based on the information supplied by Mr. McAward.

Q Why was Mr. McAward at the meeting?

A Mr. McAward had conducted the investigation.

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Mr. McAward was the most knowledgeable person that had assembled all the facts on this matter. It would only be obvious that he should be there.

Q Did your opinion of Mr. Lawlor change as a result of anything that Judelson said at the April 26th meeting?

A No, sir. I think I had already concluded earlier that there was a conflict of interest and I was looking for Mr. Lawlor to say something to the contrary, which he did not.

Q Have you or any person associated with Gulf & Western, to the best of your knowledge, made any statements to Gallagher Presidents Report, Cynthia Billings or any person connected with that report concerning the plaintiff or the events which led up to his resignation?

A No, sir.

MR. STEIN: I have no further questions, your Honor.

Your witness.

THE COURT: You say there are these subsidiaries. Were they acquired after you came with Gulf & Western or before?

A The majority were before, sir.

THE COURT: How were they acquired, can you

tell me?

THE WITNESS: Yes, through mergers, exchange offers, various tender offers.

THE COURT: Tender offers?

THE WITNESS: Yes.

THE COURT: How many were tender offers?

THE WITNESS: Offhand, I don't recall but I think perhaps three or four.

THE COURT: Do you know what the extent of replacement of the executive personnel of the subsidiaries was after the takeovers?

A Minimal, sir. I am an acquired executive. I came from a subsidiary.

THE COURT: I heard you say you came from Paramount.

THE WITNESS: Yes, sir.

THE COURT: What about the others?

THE WITNESS: I would say we have had in this corporation minimal turnover compared to any other corporation in this country.

THE COURT: On the takeover of the subsidiaries?

THE WITNESS: Yes, sir. In most cases what we had acquired, I don't think we have in our corporation one unfriendly merger.

THE COURT: That is not what I asked you. I am asking you how many new presidents of the subsidiaries, for example?

THE WITNESS: Maybe three or four at the most, through retirement or -- at the most three or four.

THE COURT: Are you able to give me any definite number of how many people went in and out of the subsidiaries in 1973 at the executive level?

THE WITNESS: No, sir, I can't but I know it was minimal.

THE COURT: Would it be as many as 50?

THE WITNESS: On the presidental level, no, sir.

THE COURT: No, not necessarily that?

THE WITNESS: It could be, sir.

THE COURT: Executives. Senior management.

THE WITNESS: I don't believe it was that high.

THE COURT: Could you estimate?

THE WITNESS: I think it may have been closer to 20. That is purely an estimate or guesstimate I should say.

CROSS EXAMINATION

BY MR. STOLZAR:

Q Mr. Davis, when you listed the subsidiaries of Gulf & Western, you omitted the name of Famous Music.

A No, sir, I didn't omit that. We were talking about Paramount. We were talking about the major groups. If I were to list all the subsidiaries I'd have to have a directory with me and talk about that we have over 100 companies of various sizes.

Q Was Famous Music a subsidiary of Gulf & Western in 1972?

A Yes, sir, it was one of our companies, correct.

Q Was a Mr. Gallagher president of Famous Music at any time?

A I think prior to that period he was.

Q Was he president of Famous Music while you were under the Gulf & Western umbrella?

A Yes,sir.

THE COURT: What does Gulf & Western itself do? Does it manufacture anything directly?

THE WITNESS: No. All of our subsidiaries, they are all part of gulf & Western.

THE COURT: But what does it do?

THE WITNESS: Gulf & Western itself is basi-

cally a staff organization which owns all these other subsidiaries that we are talking about but we are not an operating staff. The operations are all contained within these groups.

Q Did Mr. --

THE COURT: How large is it in the corporate sale in American industry?

A I believe we are about 65th or 64th largest company, sir.

Q Did Mr. McAward's reports to you [illegible] or his written report refer to management resources?

MR. STEIN: The document is in evidence and it speaks for itself. The report I think would give you a better answer than I.

THE COURT: Sustained.

MR. STEIN: I have an objection, Mr. Davis.

Q Did youtell Mr. McAward that you had heard of or knew about Management Resources?

A No, sir.

Q Did you know about Management Resources prior to the report?

A I knew that we were looking for a means I think as Mr. Judelson explained yesterday, a means of capping all of our personnel so we could have an inventory of all

of our executives and be able to transfer one to another if the need arose and that was the extent of it.

Q That was the extent of your knowledge of Management Resources?

A That term.

THE COURT: Was your employment of Mr. McAward the first attempt by Gulf & Western to locate and try to plug the leak to the media?

THE WITNESS: In that respect, yes. But Mr. McAward had been employed by us, I believe, since 1965 or '6

THE COURT: But this was the first time he had been directly?

THE WITNESS: As far as seeking leaks, yes.

THE COURT: How many leaks had there been to Gallagher?

THE WITNESS: I would have to guess again, maybe 10 or 12, sir.

THE COURT: Substantial?

THE WITNESS: I would say substantial.

THE COURT: What was the kind of information that was being leaked ? Was it information, for example, known only to senior management?

THE WITNESS: Yes, sir.

Q Did you discuss Management Resources

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with Mr. Lawlor at any time?

A Mr. Lawlor came to my office at one time --

Q Just answer yes or no.

Did you discuss Management Resources with Mr. Lawlor at any time?

A Management Resources as a term, yes.

Q Do you recall when you discussed Management Resources with Mr. Lawlor?

A No, sir.

Q Was it prior to April 24, 1973?

A Yes, sir.

Q How much prior?

A It would have to be somewhere in the area of a year or nine months, approximately. I frankly don't recall.

Q Did you ever receive or review the annual reports of Mr. Lawlor submitted to --

A He doesn't submit an annual report. He submits a business plan.

Q Fine.

A If that is what you are referring to, yes.

Q Yes.

Did you review those business plans of Mr. Lawlor?

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A Not with Mr. Lawlor, no, sir.

Q No, did you review them yourself?

A With senior management.

Q Did you review the business plan for 1972-1973? This is a Plaintiff's Exhibit and unfortunately the Exhibit ticket has fallen off.

MR STEIN: Your Honor, I object to the question. I think we are getting far afield from the direct examination.

MR. STOLZAR: That would be Exhibit 3.

THE COURT: Overruled.

A Yes, I have reviewed this document.

Q Did you notice any reference to an in-house search operation propal from Mr. Lawlor in that plan?

A Mr. Stolzar, I have reviewed many of these documents. I would have to read it again to tell you exactly what I recall of this one. I must say I don't know how many thousands of pieces of paper or documents that cross my desk in a given week so to go back that far, you are asking the impossible.

Q But you did review that plan?

A Looking at the letter, yes, obviously.

Q Now I show you another similar document. Can you identify that?

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MR. STEIN: What is that other similar document, May I know? Is it an exhibit? Does it have a mark on it?

THE COURT: Give it a mark so the record will know what you are talking about.

MR. STOLZAR: This is a document entitled G&W Business Plan.

THE COURT: Give it a number.

If you are showing it to the witness give it an exhibit number.

(Plaintiff' Exhibit 22 was marked for identification.)

Q Can you identify that document?

A Looks like many others that I have seen, sir.

THE COURT: Peruse it a minute and see if you can identify it. It is no help to tell us it looks like a lot of other documents.

A Yes, I can identify it. It says Business Plan for Employee Relations Department 1971-1972 Submitted by M.J. Lawlor.

Q Did you review that plan?

A I don't believe I did this one, no, sir.

Q What leads you to that belief?

A Because I was not reviewing the Personnel

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Department plans for that period at that time. It was something that I would look at then.

Q That was a year prior to the other?

A That is right, the '71- '72 period, that is correct.

Q How is it that you reviewed plans in '72 and not in '71?

MR.STEIN: Your Honor, that question has been asked and answered. I think the witness just explained it. I object.

THE COURT: It is totally immaterial.

Q Mr. Davis, did you read the article in the Gallagher Presidents Report of May 22, 1973, concerning Charlie Wonderful firing Lawlor?

A Yes, sir.

Q Is that entire article true?

A I have to see the article again. I am not quite sure it is.

(Mr. Stolzar handed a paper to the witness.)

A First off Mr. Judelson fired Mr. Lawlor, obviously he would do that under the authority of Mr. Bluhdorn.

Q Please, Mr. Davis, I asked you whether that article is true.

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A Essentially the article is true, sir.

Q Are the words of the article true?

A The words are generally true. I can't -- I don't know the intent of each word.

Q Did you just say that Bluhdorn didn't fire Lawlor, Mr. Judelson did?

A I said that Mr. Judelson acted under the authority of Mr. Bluhdorn.

Q Did you say that Judelson fired Lawlor, not Mr. Bluhdorn?

A I qualifed it by saying, sir, that he worked under the authority of Mr. Bluhdorn. That is exactly what I said.

THE COURT: Obviously so do you, don't you?

THE WITNESS: Of course I do.

THE COURT: Who fired Lawlor, that is what we want to know.

THE WITNESS: At that particular meeting Mr. Judelson did.

Q So the words in that article naturally --

THE COURT: Isn't that a conclusion for me to draw?

MR. STOLZAR: Yes.

Q Did Mr. Lawlor extract fees for the placement

of executives with Gulf & Western?

A I believe he extracted a fee for the placement of Mr. Biondi, as an example.

Q Was Mr. Biondi placed with Gulf & Western?

A He was placed by Mr. Lawlor's Mark Group.

Q Was he placed with Gulf & Western?

A He was with Gulf & Western, sir.

Q Was he placed with Gulf & Western?

A He was placed by Mr. Lawlor's Mark Group elsewhere.

Q Elsewhere?

A Right.

Q I ask you again, did Lawlor extract fees for the placement of executives with Gulf & Western?

A I have no knowledge of that at this time. I would have to look at the McAward report to give you further details about that, sir, but he did extract fees for personnel in Gulf & Western going to other companies.

Q Do you remember in your deposition on August 14, 1974 you were asked the question, page 11, line 3, "Did Lawlor extract fees for placement of executives with Gulf & Western, and your answer "I can't answer the question." Do you remember that?

A If that's what it says then I said that, yes,

sir. I can answer it now though. I said I can answer it now.

Q Would you answer it now, please.

A I have answered it.

Q Did he extract fees for the placement of executives with Gulf & Western?

A Your Honor, I have answered it.

THE COURT: I don't think your question is at all clear, counsel. I don't know what you mean.

MR. STOLZAR: Your Honor, those are the words in the Gallagher Presidents Report, Lawlor extracted fees for placement of executives with Gulf & Western. I am asking him about the truth of the article and I want an answer yes or no; if he knows.

MR.STEIN: Your Honor, I submit the question has been asked at least three times and answered.

THE COURT: I think so. Let us move on.

Just so that I understand the facts, you say that he did extract fees for placing people out of Gulf & Western?

THE WITNESS: Yes, sir.

THE COURT: But not in Gulf & Western?

THE WITNESS: As far as I know, I am not aware of any.

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THE COURT: All right.

Q Did Gulf & Western pay to Lawlor the Mark Group, Management Resources -- any affiliate of Lawlor, fees for the out-placement of personnel of Gulf & Western?

A Not to my knowledge.

MR. STOLZAR: No further questions of this witness.

MR. REINER: I just have a few questions, your Honor.

CROSS EXAMINATION

BY MR. REINER:

Q Was Mr. Biondi an executive with Gulf & Western, sir?

A He was in the Tax Department, sir.

Q And fees were extracted for the placement of him, is that not correct?

A Yes, sir, I stated it.

Q The statement then extracted fees for the placement of executives with Gulf & Western is correct in that context, is it not, sir?

A Yes, sir.

THE COURT: You said a minute ago that Mr. Judelson acted under the authority of Mr. Bluhdorn.

THE WITNESS: Yes, sir.

THE COURT: I take it you are referring to this matter of the conference and the discharge of the plaintiff?

THE WITNESS: Yes, sir.

THE COURT: Do you know whether Mr. Bluhdorn saw the McAward report?

THE WITNESS: I believe he did, sir.

THE COURT: Do you know?

THE WITNESS: Yes, sir.

THE COURT: He did see it.

Q Were there any discussions with Mr. Bluhdorn about the McAward report?

A I believe we had a discussion with him. I don't recall exactly what period. And he knew that Mr. Lawlor was going to be -- going to have a meeting with us to discuss the details of it.

THE COURT: Was there a discussion before the meeting with Lawlor?

THE WITNESS: In detail with Mr. Bluhdorn, no, sir.

Q There was a discussion, was there not, sir?

A I mean a discussion but not going into the detail as an example that I had with Mr. Judelson.

THE COURT: What was the discussion with Mr. Bluhdorn, that is what I want to know?

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THE WITNESS: Namely I think the same discussion that we had before, hoping that this was not true, that the information -- that something was here that we didn't understand and to get to the bottom of it and find out if what we saw in that report were true.

Q And if it were true what did Mr. Bluhdorn say?

A That he would have to be discharged; he had conflict of interest.

THE COURT: Is Mr. Bluhdorn in New York?

THE WITNESS: Pardon me, sir.

THE COURT Is Mr. Bluhdorn alive now?

THE WITNESS: Yes, sir.

THE COURT: Where is he?

THE WITNESS: He is in New York.

Q Is it fair and accurate to say then that Gulf & Western Industries' chairman forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as vice president Employee Relations a true statement?

A I would say so, sir.

Q Is it a true statement that Lawlor reportedly set up a dummy corporation Mark Group?

A A dummy group called the Mark Group. I don't know if it was a corporation or not.

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Q You don't know if it was a corporation but there was some sort of entity?

A Yes.

Q And it was a dummy entity?

A Dummy entity called the Mark Group. I knew they had made applications to incorporate but I don't know at that time whether it was a corporation. It may have been.

Q You just don't know whether it was actually incorporated?

A That is correct, sir, but itas a group.

Q It was a dummy group, is that right?

A Yes, sir.

Q Isn't it true that they opened a bank account for the dummery corporation?

A Yes, sir.

Q Is it true that they channelled unsolicited job resume to the Mark Group?

A Yes, sir.

Q Is it true that they extracted fees for the placement of executives who were with Gulf & Western?

A Yes, sir.

Q Is it true that Charlie eliminates title?

A I am sorry, sir?

Q Is it true, the statement that Charlie eliminates title?

A At that time, yes, sir.

Q Is it true that --

THE COURT: Did they eliminate the job as well?

THE WITNESS: The job was split among three people after that, sir. That particular -- Mr. Lawlor's job, yes, was eliminated at that time.

THE COURT: Elimiated and split among three people who were already employed?

THE WITNESS: Several were and one was brought back who had previously been employed.

Q So is this a fair and true and accurate state of what happened?

A Yes, sir.

MR. REINER: No further questions.

THE COURT: Of course, the last is a total conclusion. There was no objection but I am going to ignore it.

MR. REINER: I recognize that, your Honor.

THE COURT: All right, next witness.

MR. STOLZAR: Your Honor, may I ask one more question?

THE COURT: Do you have more?

MR. STOLZAR: Yes.

RECROSS EXAMINATION

BY MR. STOLZAR:

Q Mr. Davis, I direct your attention to the words of the Gallagher Presidents Report article "Extracted Fees for Placement of Executives with Gulf & Western". In answer to the question which Mr. Reiner asked you about that line, did you understand him to mean executives working for Gulf & Western being out-placed?

A Yes, I understood that but I also understand that when you read this report it is written in a language all of its own and you can interpret it any way you want. The interpretations can be three or four ways and one who reads this type of report can so make that. YOu can read it any number of ways, whether it was in-house, out-house, and so forth. I interpreted it meaning people -- as I read this, I am referring myself to Mr. Biondi. That is how I interpreted it.

Q You term Biondi an executive of Gulf & Western?

A Yes, he was at that time in the Tax Department.

Q He was a lawyer in the Tax Department?

A I would consider him an executive. Wouldn't you?

Q How many lawyers were there in the Tax Depart-

ment?

A Id on't recall. A good number.

Q A good number?

THE COURT: Are you a lawyer by training?

THE WITNESS: No,sir.

THE COURT: Is Mr. Judelson, is he a lawyer?

THE WITNESS: No, sir.

THE COURT: Is Mr. Bluhdorn a lawyer?

THE WITNESS: No, sir.

THE COURT: Are there any lawyers in senior manage

ment?

THE WITNESS: No, sir.

THE COURT: I didn't think so.

MR. STOLZAR: No further questions.

MR.STEIN: No questions.

MR. REINER: No questions, vour Honor.

(Witness excused.)

MR. STEIN: Your Honor, we only have one short

witness.

Could we have a five-minute recess before we

puthim on.

THE COURT: Yes.

(After recess.)

MR.STEIN: Mr. Jones, please.

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R O B E R T L. J O N E S, called as a witness on behalf of defendant Gulf & Western, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEIN:

Q Mr. Jones, would you briefly describe your relationship to Gulf & Western?

A I am vice president and resident counsel of Gulf & Western.

Q Are you at attorney at law?

A Yes, I am.

Q Are you admitted to practice law in any state, Mr. Jones?

A State of Texas.

Q When were you admitted to practice in Texas?

THE COURT: You are not admitted in New York?

THE WITNESS: No,sir, I am not.

THE COURT: And you are working here as a lawyer?

THE WITNESS: Yes, sir.

Q When were you admitted to practice in Taxas?

A 1956.

Q Were you at ameeting at Gulf & Western on April 26, 1973 at which Mr. Judelson, Mr. Davis and Mr. McAward were also present?

A Yes, I was.

Q Were you at the meeging when Mr. Lawlor was present?

A Yes, I was.

Q Did you at any time after that meeting ever have any conversations with Gallagher, Miss Billings or any representative of Gallagher's during which you repeated what happened inside that meeting, anything that Judelson said or anything anyone else said?

A No, I did not.

Q Do you know Richard Ives Rudell?

A I have met him, yes, I have met him.

Q How did you become acquainted with him.

A Either he called me or Mr. Lawlor when I called Mat about the warrants, told me that he was his lawyer, and that I should discuss the matter with Mr. Rudell.

Q Can you fix a date as to your conversation?

A That would have been in July or August probably of '73.

Q Did you ever meet Mr. Rudell in July or August of '73?

A Yes, I did.

Q Where?

A He came to my office and we had I believe two

meetings.

Q Let us go to the first meeting now. Can we fix a date as to that?

A That would have been some time I would say in August.

Q Of 1973?

A Yes.

Q Anyone else present at that meeting?

A No.

Q What did you say and what did he say?

A Obviously I don't remember the exact words but basically Mr. Lawlor had some restricted warrants that, under the terms of the warrant policy, he was supposed to sell back to us at a dollar a share when he left the company: and he never returned them, and the purpose of that meeting was to get them back, and I had a meeting with Mr. Rudell in which I explained the terms of the warrant plan and asked that his client return the warrants to us.

Q Did Mr. Rudell at that meeting tender a Gulf and Western or tender to you an amount of money?

A No.

Q At any of these meetings did Mr. Rudell tender an amount of money to you?

A No.

Q During any telephone conversation subsequent to these meetings did he tender an amount of money to you?

A No.

THE COURT: Did you ask for any money?

THE WITNESS: I only asked for the warrants back. I did not ask for any money.

THE COURT: Did you know about the money?

THE WITNESS: I knew there was some money in that account, yes.

THE COURT: Why didn't you ask for the money?

THE WITNESS: I wanted the warrants back but I was not interested -- I didn't ask for the money.

THE COURT: Why not? Weren't you under the impression it was Gulf & Western's money?

A I was under the impression that he had acquired it in a transaction that should have given us an equitable interest in the money, your Honor, but I wasn't interested in getting the money back. That wasn't my job.

THE COURT: Had anybody directed you to get back the warrants?

THE WITNESS: Get back the warrants, yes.

THE COURT: Who?

THE WITNESS: Mr. Judelson.

THE COURT: What about the money?

THE WITNESS: No, we did not have a discussion about the money.

THE COURT: You said nothing about it?

THE WITNESS: No.

Q At either of these meetings with Mr. Rudell or during any of these telephone conversations, did you ever make a deroggatory remark concerning Mr. Lawlor?

A No, I did not.

Q You didn't call Mr. Lawlor a goddam son of a bitch, did you, Mr. Jones?

A Absolutely not.

MR. STEIN: I have no further questions.

THE COURT: How long had you known Lawlor?

THE WITNESS: I have known him ever since he came with the company, your Honor.

THE COURT: How long was that?

THE WITNESS: I suppose that was three or four years.

CROSS EXAMINATION

BY MR. STOLZAR:

Q Mr. Jones, when you went to the meeting on April 26, 1973, did you have with you a resignation for Mr. Lawlor's signature?

A Yes, I did.

MR. STOLZAR: No further questions.

MR. REINER: I have no questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR.STEIN: Your Honor, at this point I would like to offer into evidence Exhibit 21 consisting of minutes of Robert J. Bushee Associates, dated January 31, 1972, Exhibit 22, stock purchase agreement entered into between Matthew J. Lawlor and Robert J. Bushee Associates and Robert J. Bushee individually, invoices rendered to Robert J. Bushee Associates, Inc. from Steven C. Markham, Exhibit 23; checks payable to the order of Steven C. Markham by Robert J. Bushee & Associates, Exhibit 24; checks payable to the order of Matthew J. Lawlor from Robert J. Bushee & Associates, Exhibit 25; ledger records described in the Bushee deposition testimony which has been offered into evidence by the plaintiff, Exhbiit 26; and as Exhibit 27 entrees from the books and records of Robert J. Bushee & Associates, also described in Bushee's testimony.

Your Honor, that concludes the case of defendant Gulf & Western, Judelson and Davis.

THE COURT: Received.

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(Defendants' Exhibits 21 thorugh 27 was received in evidence.)

C Y N T H I A A. B I L L I N G S, called as a witness by defendants Gallagher Presidents Report, Inc. and Cynthia A. Billings, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REINER:

Q By whom are you employed, Miss Billings?

A By the Gallagher Presidents Report.

Q What position do you have?

A Editor and president.

Q Would you tell the Court what the Gallagher Presidents Report is?

A It is a weekly newspaper circulated to top executives in the business community by subscription.

Q How many subscribers do you have?

A Approximately 3,000.

Q Where are these subscribers located?

A Throughout the United States.

Q Is this Gallagher Presidents Report written in any particular style?

A Yes, it is.

It is written in a very tight concise manner.

Q The manner in which it is written, do you use full sentences with subjective and subjunctive clauses?

A No, very often not.

Q How long have you been editor?

A Since March of 1972.

Q What are the duties of an editor?

A The duties comprise of gathering information, myself together with my staff, makingit ready for publication.

Q How long have you been president?

A Since October of 1972.

Q What does that entail?

A That entails the financial and managerial aspects of putting out the Presidents Report.

Q And did you hold a position prior to March of 1972?

A Yes, I was managing editor.

Q How long were you managing editor?

A Approximately five years.

Q How long have you been employed by Gallagher Presidents Report?

A Since September 1965.

THE COURT: Is that a weekly or monthly or what?

THE WITNESS: Weekly.

THE COURT: What is the market for it?

THE WITNESS: Top executives in the business community.

THE COURT: Are they subscribers?

THE WITNESS: Yes, right. It is only sold by subscription.

THE COURT: 3,000 subscribers?

THE WITNESS: Right.

Q What does the Gallagher Presidents Report deal with?

A It deals with topics of interest to its readership, which comprises top executives in corporations throughout the United States.

Q Does it have any news items in it?

A Yes, it does.

Q Does it have editorial content?

A Yes, it does.

Q Are you familiar with the May 22, 1973 issue?

A Yes, I am.

Q Did you edit that issue?

A Yes, I did.

Q Were you involved in any way in the article on the second page entitled Charlie Wonder Bluhdorn cracks down

on executives?

A Yes, I was.

Q I show you Plaintiff's Exhibit 18 and draw your attention to the second article on the page there, on page 2, and ask you is that the article to which I have just referred?

A Yes.

Q Would you tell me the nature of the sources -- the first information that you received that gave rise to this article?

A Pardon? I didn't catch that.

Q I withdraw the question and I will restate it.

Will you tell me the first time you received any information that gave rise to the writing of this article?

A Well,it was about a week before publication.

Q And can you tell me what was told to you, what information you received?

MR. STOLZAR: Objection, your Honor.

THE COURT: Overruled.

MR STOLZAR: How was the information relayed to her?

THE COURT: Overruled. Read the question.

(Question read.)

A The information I received was that Mr. Lawlor at Gulf & Western had recently been outsted due to some questionable practices involving an organization called the Mark Group which involved using unsolicted resumes, and that there were fees involved in working with these unsolicited resumes.

Q What did you do upon receipt of that information, if anything?

A I turned the basic data over to one of my staff who was then instructed to check out this information with other sources which we have.

Q Could you tell me, had you ever had any experience with that first source of information which you had received?

A Yes.

Q Would you tell me what experience you had had in the past with that person?

A Well, I had known this particular source for a period of six to seven years,and had always had authoritative information from this source in the past.

Q Could you tell me the nature of the person's employment or business?

A This particular source is a professional

journalist.

Q Did he enjoy any reputation in the news media?

A Yes.

Q What was that reputation?

A He was accurate and authoritative reporter.

Q You say you turned over this information to someone on your staff. What was the name of that person?

A Robert Kenney.

Q Is he employed by Gallagher Presidents Report on a regular basis?

A He was. He is no longer.

Q At that time?

A Yes.

Q I will rephrase the question. At the time was he employed on a regular basis?

A Yes.

Q What position was he employed as?

A He as an associate editor.

Q Did you receive any further report or information from Mr. Kenny following turning over this information to him?

A Yes, I did.

Q What did he say to you and what did you say to him?

A Well, Mr. Kenney had reported back to me that

the information which I had given him checked out, and that his sources confirmed what my sources had given me.

Q Did he tell you what the nature of the source was that he had checked it out with?

A Well, he said that it was a corporate executive.

Q Was there any further checking done by Gallagher Presidents Report concerning the article which was written?

A Yes.

Q What further checking was that?

Q The further checking involved a contact within Gulf & Western.

Q Did you edit the content of this particular article?

A Yes, I did.

Q I read you the first sentence "Charlie Wonderful Bluhdorn cracks down on executive." You use the word Charlie Wonderful. Where did you get those words?

A Well, those words, that is a name which appears in the business communities over the years and it's a style that is part of our report.

Q Where did you get the words crackdown on executives?

A That refers to the entire paragraph.

Q The first sentence goes Gulf & Western Industries chairman forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as vice president employee relations. Where did you get that information?

A From my source.

Q Had that been checked with any other source besides the first source?

A Yes.

Q Where did you get the information Lawlor in charge of G&W Personnel Department?

A Well, that was public information.

Q Next sentence, reportedly set up dummy corporation, Mark Group.

Where did you get that information?

A From my source.

Q Is that a full sentence,by the way?

A No.

Q Is that the usual [illegible] style that you write in?

A Yes, pretty much.

Q Next sentence, opened back, for dummy corporation. Where did that come from?

A From my source.

Q Is that a full sentence?

A No.

Q Next sentence, "Chanelled unsolicited job resumes to Mark Group." Where did that come from?

A From my source.

Q Next sentence, "Extracted fees for" --

THE COURT: You say your source.

Are you talking now about this?

THE WITNESS: The initial source.

THE COURT: Unidentified newspaper journalist or are you talking about what the associate editor brought back to you after talking with senior executives at Gulf & Western? What do you mean?

THE WITNESS: This is the --

MR. STEIN: Executives at Gulf & Western.

THE WITNESS: No, I said a source within Gulf & Western.

THE COURT: Not an executive?

THE WITNESS: No, sir.

THE COURT: Would you read back her answer to that question? We will take a short recess.

(Question and answer read.)

THE WITNESS: Well, he said it was a

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corporate executive.

THE COURT: What corporate executive?

THE WITNESS: A corporate executive.

THE COURT: What,AT&T or something?

THE WITNESS: No.

THE COURT: Gulf & Western, is that what you are referring to?

THE WITNESS: No, sir, it was not Gulf & Western.

Q Was there a third source?

A Yes, there was.

Q The corporate executive to which you refer was the second source?

A That is correct.

Q There was a third source?

A That is correct.

Q Where was that third source located?

A Within Gulf & Western.

Q Was that a corporate executive?

A No.

Q All right.

Let me go back to Exhibit 18. That is the report in question here. "Channelled unsolicited job resumes to Mark Group." Where did that come from?

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A From my initial source.

Q From your initial source?

A Right.

Q Was that checked out further?

A Yes, it was.

Q Checked out with that second source you referred to?

A Yes, yes.

Q Next one "Extracted fees for placement of executives with G&W". Where did you get that information?

A From my initial source.

Q Was that checked out?

A Yes, it was.

Q Is that a full sentence?

A No, it is not.

Q Are there any subjective clauses in there?

MR. RUDELL: I object to that, your Honor. It speaks for itself.

THE COURT: I would think so. You know one of the requirements for a judge is that you have to go through high school.

Q Next Charlie eliminates title. Where did you get that information?

A After checking with Gulf & Western, we found out that

the title was no longer in use.

Q Next sentence"Turned over Lawlor's duties to Director of Personnel Davis

Where did you get that information?

A From Gulf & Western.

THE COURT: You say you got it from Gulf & Western. Who in Gulf & Western?

MR.REINER: Your Honor, from the very outset of the litigation we have asserted the Shield Law of the State of New York. Plaintiff has received notice of this last June in notices to admit, interrogatories have asserted it. Not once have they ever brought it to the Court's attention.

THE COURT: I just asked the question. We are not talking about the plaintiff.

MR. REINER: Your Honor --

THE COURT: If she doesn't want to tell me, that's all right. It will go to her credibility however.

MR. REINER: I understand that, your Honor. I understand.

Q Will you tell me , Miss Billings, as an editor why was this article newsworthy in your case?

A The article is newsworthy for several reasons.

First of all --

MR. RUDELL: I object to that, if your Honor pleases. The article speaks for itself.

MR. REINER: Your Honor, I am asking.

THE COURT: Overruled.

Q Please proceed.

A The article is newsworthy for several reasons.

First of all, Mr. Lawlow being a vice president and a corporate officer of Gulf & Western, which is a major conglomerate and among one of the hundred largest corporations in the United States. He was therefore of interest to my particular audience because the audience could be either creditors or suppliers or even investors in Gulf & Western, and they are entitled to know what is going on in the corporations with which they may do business.

Q In the context of your subscribers and readership, was Mr. Lawlor someone of interest and importance?

A Yes, very definitely.

Q Would he have been well known or known to your subscribers?

A Yes.

Q Did there come a time when you ever were in direct communication with Mr. Lawlow?

A Yes.

Q When was that?

A Well, that about two weeks I think somewhere in the middle of June of '73.

Q Did you try to get in touch with Mr. Lawlor prior to the publication?

A Yes, we did.

Q Were you successful?

A No.

Q Did you know where he lived?

A Not at that time?

Q Did you try to find out where he lived?

A Yes, we did.

Q Did you subsequently get in touch with him after the publication?

A Yes.

Q Could you tell me the circumstances surrounding you getting in touch with him after the publication?

A I received a letter from the lawyer Edgar Bennett Williams stating thatthere was some dissatisfaction with the article that appeared in the May 22nd issue of the Gallagher Presidents Report. I then tried to find out where Mr. Lawlor lived, so that I might contact him to find out what caused this letter to be written; and through further investigation after about a week I was able to

locate him up in Connecticut.

Q What was your first communication with Mr. Lawlor?

A It was a telephone call to his home.

Q What did you say and what did he say?

A Well, the first time I called he wasn't home, and Mrs. Lawlor took the message.

Q Did?you speak with him subsequently?

A Yes, I did.

Q When was that?

A Approximately June 15th.

Q And what manner of communication did you have?

A Telephone call. I called back.

Q What did you say and what did he say?

A I told him I had received the letter, and that I didn't know what it was all about, and I thought it might be a good idea for us to sit down and discuss it.

Q What did he say?

A Yes, he thought it was a good idea, and we set up a luncheon meeting for the 26th of June at the Tudor Room of the Commodore Hotel.

Q Did you have a meeting with Mr. Lawlor at the Tudor Room of the hotel you just testified?

A Yes.

Q What did you say; what did he say?

A I told him the purpose of the meeting was first of all that there was somewhat of a cloud over this situation, and I thought that it was up to him to dispel the cloud, and secondly, I wanted to find out whether he felt he had been unfairly treated by Gulf & Western.

Q What did he say?

A He said he had been unfairly treated, but when I pressed him further on why he thought so, he did not care to go into it.

Q Did you have any other discussions with him?

A Yes. WE were discussing what he planned to do, and he mentioned that he wanted to concentrate 80 per cent of his time to get relocated, and 20 per cent of his time to settling the matter at hand.

When I asked him what he would be interested in doing in relocating, he said, well, he was thinking of going into business for himself, but he didn't want to rule out all options. He still, if the right situation came along, he would be interested in rejoining the corporate scene.

Q What did you say, if anything?

A Well, I said to him, it was interesting because I had recently met with a man who had been an executive with another leading corporation, and who had recently

gone into business for himself, and I suggested if he were interested, I would be very happy to get the two together, I think there might be a mutuality of interest there, and it might be helpful for him in the setting up of a business.

Q What did Mr. Lawlor say, if anything?

A Well, he was generally receptive to the idea, but he said he didn't want to X out any options at this time, he was keeping an open mind on the matter.

Q Did he say anything further at any meeting?

A Well, at the meeting I also mentioned the fact that his particular area of expertise was in great demand by the business community, particularly among smaller businesses, that are not able to afford the full-time services of a person who would be an epxert in industrial relations, and I suggested that this whole area was one of interest to my readers, and that a person such as himself, if he were going into an independent consultants, I would do an items in the report which might call for the need for small business to look into this and that independent consultants were available in this area which could help smaller businesses.

Q Anything further said?

A In general, I think that pretty well sums up the

meeting.

Q Did you have any ogher further communications with Mr. Lawlor thereafter?

A Yes, I did. I went back to my office and I wrote up the piece to which I just referred, and I called him on the telephone, and said I have a piece here, and I'd like you to hear it and tell me what you think.

So I read it to him over the phone and he liked it but he said "Well, I don't want you to do anything now. I still haven't made up my mind on this consultant thing and I don't want to go ahead with something like that until I have made my mind up definitely."

Q What if anything further happened?

A Well, I told Mr. Lawlor at that time to please get back to me when any decisions had been made in that regard.

Q Did any of these discussions concern a retraction of any nature?

A No, sir.

Q This piece you are talking about, was that supposed to be a retraction?

A No, it was not.

Q As you sit on the stand now, do you believe the contents of the redort of May 22nd 1973 concerning

Mr. Lawlor to be true and accurate?

A Yes, I do.

MR. REINER: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. STOLZAR:

Q Miss Billings, you said in your direct testimony that you tried to reach Mr. Lawlor prior to the publication of the article, did you not?

A That is correct.

Q When you were being deposed in my office prior to this trial, and you were asked whether you contacted or tried to contact Mr. Lawlor, didn't you answer, no?

MR.REINER: Your Honor, I object. I don't have a copy of the transcript.

MR. STOLZAR: Nor do I, sir, I am sorry.

MR. REINER: I object, your Honor. I have no transcript to which to refer. The plaintiff has not provided me with a transcript.

THE COURT: Overruled.

MR. STEIN: Your Honor, so far as we know there has been no transcription of Miss Billings' testimony despite the fact that it was taken over a month ago.

THE COURT: Overruled. Answer the question.

A I don't recall at thattime what was said.

Q You didn't recall what you said in August of this year or September of this year but you recall so vividly your conversation with Mr. Lawlor?

THE COURT: Sustained. That is argumentative.

MR REINER: Objection.

Q How did you try to contact Mr. Lawlor prior to the publication of the article?

A Well, as I have just mentioned here, Gulf & Western was called to first of all verify the fact that Mr. Lawlor was no longer in the employ of Gulf & Western, at which time it was asked where Mr. Lawlor might be, and were informed that there was no forwarding address for Mr. Lawlor.

Q Who made this inquiry?

A My associate, Mr. Kenney.

Q DDid you hear the inquiry being made?

A No, I did not.

Q Do you know for a fact of your own knowledge that he actually did make this inquiry?

A Yes, I do.

Q How do you know that?

A Because he told me.

Q Because he told you?

A Yes.

Q And that is the only way you know that he made this inquiry?

A No,he has -- he made notes on his inquiry.

Q Did he make notes on his other inquiries?

A Yes, sir.

Q Do you have those notes?

A Do I have them now?

Q Yes.

A My lawyers have them. I don't know if they are here but --

MR. REINER: I will look. Your Honor, this would have been more properly the subject of discovery.

THE COURT: I would have thought so, or certainly a notice to produce at the trial or something. All right, go on.

MR. REINER: Your Honor, we did produce documents. Please don't misunderstand me.

THE COURT: Do you have the notes?

MR. REINER: I don't know, your Honor. I will look.

THE COURT: If you have them, produce them.

MR. REINER: I certainly will, your Honor.

THE COURT: Proceed.

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Q With whom did Mr. Kenney check the accuracy of the statements made prior to the publication?

A With a corporate executive towhom I referred earlier, and a source at Gulf & Western.

Q When you say with a corporate executive, you mean a corporate executive of Gulf & Western?

A No, I do not.

I think I already said,to clarify the three sources, that the second source was a corporate executive not associated with Gulf & Western.

THE COURT: I take it then you did not ask any corporate executive, didn't check this story out with any corporate executive of Gulf & Western? Is that what you are telling me?

THE WITNESS: Yes, sir.

THE COURT: Before you published it?

THE WITNESS: Right.

Q What is the source of your knowledge that Lawlor would have been known to your subscribers?

A Well, his name was certainly in public documents such as prospectuses and 10-Ks and annual reports. Also being a corporate officer, he would have a high visibility in the business community.

Q Did you see those prospectuses and corporate

reports and proxy statements naming Lawlor?

A Yes, sir.

Q When did you see them?

A Before publication.

Q How much before publication?

A Well, I got the information approximately a week ahead of publication. It would be some time within -- in that week.

Q Where did you see such prospectuses and proxy reports?

A In our files.

Q In your files?

A In our corporate files, right.

Q Do you maintain files on all corporations?

A Yes, sir.

Q How big are your offices?

A I don't know the square footage exactly. I don't quite know how to answer this except wehave 25 employees.

Q In relation to the size of this courtroom?

A 25 employees so roughly in relation to this courtroom, I would say it is approximately this size.

Q And in a room approximately this size you have 25 employees and you maintain records of all corporations?

A Not all corporations. Leading corporations

publicly owned, some even private.

Q And you went to those files and pulled out the proxy reports and you saw Lawlor's name?

A Yes.

THE COURT: Counsel, you can get it in Standard & Poors.

Q Did those reports contain Mr. Lawlor's home address?

A No, they did not.

Q Miss Billings, did you actually attempt to reach Mr. Lawlor before you got the letter from Edward Bennett Williams?

A I didn't personally. My associate, Mr. Kenney, as I have explained, called Gulf & Western to determine whether Mr. Lawlor was still in the employ of the company. He found out that he was not. We asked where he might be located, the company said that there was no forwarding address for Mr. Lawlor.

Q You said when you called Mr. Lawlor at his home after you located it, you wanted to meet with him to find out what it was all about at that point?

A I wanted to know what the lawyer letter was all about.

Q Wasn't the lawyer's letter quite specific that your publication had slandered and libeled Mr. Lawlor?

A No, sir, I don't think that's -- I don't have the letter in front of me but I don't think that is what the letter said.

Q Miss Billings, you have talked this morning about how you would like to help Mr. Lawlor in obtaining employment or putting him together with somebody else so that he could go into business with him. Is that right?

A Yes, sir.

Q In the light of your article and your conclusion that it was true and that this man was guilty of some corporate conflict of interest, and other problems, why did you offer your assistance?

A Well, first of all, I think one has to realize that anyone is in a position to be helped.

Secondly, I being a small business --

MR. REINER: Your Honor, she is replying to an open question.

THE COURT: Yes, wide open. Go ahead.

A Secondly, I run a small business, and I didn't want any lawsuits simply because my time is very valuable, and it is also an expensive procedure, and I was anxious to meet with Mr. Lawlor and to try to help him in any way possible.

Q This despite the fact that you had concluded

that your article stated the truth?

A Well, I have no axe to grind with Mr. Lawlor, as I explained to him when I met him.

Q Did you have an axe to grind with the other people with whom you had placed Lawlor, this --

A No, sir.

MR. REINER: Objection, your Honor.

THE COURT: Your counsel anticipated the answer would be yes.

Q Miss Billings, would you tell us precisely what steps were taken by you or Mr. Kenney or anyone else in your organization to check out the truth of the artic le before it was published?

A First of all, as I explained, the initial source whom I had had dealings with for six or seven years, and in the past had given me much material which had never been questioned, I have every confidence in the authoritativeness and accuracy of the material he gave me.

Q Please, Miss Billings, 5ell us what you did.

MR. REINER: He asked an open question again.

THE COURT: No, he didn't ask, he asked her what she did and she is making a speech.

A I turned it over to Mr. Kenney, whom I instructed then to check out further with additional sources.

Q What did Mr. Kenney do?

A Mr. Kenney then proceeded to check the information which I had given him, to check that out with additional sources.

Q What were those sources?

A A corporate executive not affiliated with Gulf & Western, and a source within Gulf & Western.

Q These were people sources?

A Yes, sir.

Q Not books and records?

A No, sir.

Q Did Mr. Kenney go to the bank to check out the Mark Group account?

A No, sir.

Q Did Mr. Kenney go to the Secretary of State's office or contact the Secretary of State's office to learn whether there was a corporation by the name of Mark Group?

A No,nsir.

Q Did Mr. Kenney ever see any checks to the order of the Mark Group for fees?

A No, sir.

Q Did Mr. Kenney ever see any checks from Gulf & Western for fees paid to the Mark Group?

A No, sir.

THE COURT: I take it this Gallagher Report circulates throughout the country?

THE WITNESS: Yes, sir.

THE COURT: In every state?

THE COURT: Yes, sir.

THE COURT: Where is it printed?

THE WITNESS: In New York.

THE COURT: Is it distributed through the mails?

THE WITNESS: Yes.

Q Who was your initial source?

MR. REINER: Objection, your Honor. Last June we asserted the Civil Rights Law of the State of New York and not once has counsel moved this.

THE COURT: Overruled.

A As I indicated my initial source was a professional journalist with whom I had knowledge for at least six or seven years.

THE COURT: The answer is not responsive.

MR. REINER: Your Honor, this Civil Rights Law has constitutional overtones. If counsel wanted to test this --

THE COURT: I just directed the witness to answer. That gives you ground to test it.

MR. REINER: Your Honor, the Constitution --

THE COURT: Answer the question. Who was it?

MR. REINER: Your Honor, may I --

THE COURT: Name the person.

MR. REINER: Your Honor, may I respectfully request of the Court that if rulings are going to be made on this, that it involves a constitutional question.

THE COURT: I have ruled on it.

Proceed. You don't have to write a tome. You have just established that this thing was published throughout the United States, that they used the mail. There is a serious question whether New York law can govern it, even if the New York law is valid, which I doubt.

Proceed.

MR. REINER: Your Honor, may I make an application?

THE COURT: Answer the question.

MR. REINER: That the law applies here and that it is constitutional and that if your Honor holds it unconstitutional, that we would like to test that out with a three-judge court. It is a state statute.

THE COURT: We will worry about that next time. Answer the question.

A Well, your Honor, I don't feel in a position

that I could name this particular source.

THE COURT: You refuse to answer it?

THE WITNESS: Yes, sir, based on the fact that the entire publication is built on the confidential sources.

THE COURT: You are mindful that you are charged here with malice and that you published this article without verifying its truth, and with reckless disregard as to whether it was true or false? You are aware of that?

THE WITNESS: Well, sir, I am --

THE COURT: Are you ware of that?

THE WITNESS: No, sir, I was not aware that this constituted reckless disregard.

THE COURT: I didn't ask you that.

Are you aware that that is what you are charged with by this plaintiff?

THE WITNESS: I mean, so be it. I --

THE COURT: Are you aware of it? Can you answer the question?

THE WITNESS: Now I guess --

THE COURT: You are being very evasive.

THE WITNESS: I don't mean to be, your Honor.

THE COURT: Can you answer the question yes or no? Is that what you are charged with?

THE WITNESS: All right. That is what I am

being charged with.

THE COURT: Youstill refuse to tell us the identity of these sources?

THE WITNESS: Yes, sir, I do based on the --

THE COURT: All right.

Q Who was the corporate executive source?

MR. REINER: Same objection, your Honor.

THE COURT: Overruled.

A It was a corporate executive with whom I had also had experience in the past six or seven years with information.

Q Would you please answer the question with the name of the executive?

A I am afraid that I will take the same position on my second source. I am unable to name that source.

THE COURT: You refuse to?

THE WITNESS: To protect that source.

THE COURT: I didn't ask you that.

THE WITNESS: All right.

THE COURT: Do you refuse to answer it?

THE WITNESS: Yes, I do.

Q Would you give us the name of the contact within Gulf & Western with whom Mr. Kenney sought to verify your article?

MR. REINER: Same objection, same grounds, your

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Honor.

THE COURT: Overruled.

THE WITNESS: Again, I am unable to give you that.

THE COURT: Do you refuse to do it?

THE WITNESS: Yes, sir.

MR.STOLZAR: I have no further questions of this witness.

Excuse me, your Honor, may I ask the witness a further set of questions?

BY MR. STOLZAR:

Q Can you identify this document? This is a letter --

MR. REINER: Can we have it marked?

THE COURT:Y es, please mark it, Mr. Stolzar.

MR. STOLZAR: These will be Plaintiff's Exhibits 23 and 24 for identifcation.

xx (Plaintiff's Exhibits 23 and 24 were marked for identification.)

MR.REINER: May I see them before any questions are asked? Do you have them in front of you, Miss Billings?

THE WITNESS: Yes.

MR. REINER: May I see them, please?

(Mr. Reiner examines documents.)

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BY MR. STOLZAR:

Q Can you identify these letters?

A Yes, sir, I can.

Q Are those the letters that you referred to in your prior testimony from Edward Bennett Williams?

A That is right.

MR. STOLZAR: I offer Exhibits 23 and 25 in evidence.

xx (Plaintiff's Exhibits 23 and 24 were received in evidence.)

Q Is it not a fact, Miss Billings, that the letter from Williams apprised you of the fact that the article in Gallagher Presidents Report of May 22nd concerning Lawlor was false and defamatory to Matthew Lawlor, and that he had retained the offices of Willams , Connolly & Califano in this matter for an amicable disposition?

MR. REINER: Objection.

THE COURT: Sustained.

Q Did you reply to Mr. Williams' letter?

A Yes, I did.

Q Is this a copy of your reply?

MR. REINER: May we have it marked, your Honor?

MR.STOLZAR: That will be Plaintiff's Exhibit 25 for identification.

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Honor.

THE COURT: Overruled.

THE WITNESS: Again, I am unable to give you that.

THE COURT: Do you refuse to do it?

THE WITNESS: Yes, sir.

MR.STOLZAR: I have no further questions of this witness.

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THE WITNESS: Yes.

MR. REINER: May I see them, please?

(Mr. Reiner examines documents.)

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A Yes, sir, I can.

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MR. REINER: Objection.

THE COURT: Sustained.

Q Did you reply to Mr. Williams' letter?

A Yes, I did.

Q Is this a copy of your reply?

MR. REINER: May we have it marked, your Honor?

MR.STOLZAR: That will be Plaintiff's Exhibit 25 for identification.

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THE WITNESS: Yes, right.

(Plaintiff's Exhibit 25 was marked for identification.)

MR. STOLZAR: I offer it in evidence, your Honor.

(Plaintiff's Exhibit 25 was received in evidence.)

Q Miss Billings, you stated that when you met with Mr. Lawlor, he brought with him and gave you a copy of his resume?

A Two copies.

MR. REINER: I don't believe that was the testimony, your Honor, but I --

(Plaintiff's Exhibit 26 marked for identification.)

Q I show you Plaintiff's Exhibit No. 26 for identification and ask you , this is a copy of the resume?

MR. REINER: Your Honor, I don't believe that was the testimony but --

THE COURT: Show it to the witness if you are asking her if it is a copy of the resume. I don't know how she can answer when you hand it to him.

(Paper handed to witness.)

A Yes, sir. Right.

MR. STOLZAR: I offer this document in evidence.

MR. STEIN: Your Honor, I object to receiving into evidence Mr. Lawlor's resume. I don't know what

issue in this case it is probative of.

THE COURT: Received. Overruled.

MR. STEIN: Exception.

xx (Plaintiff's Exhibit 26 was received evidence.)

Q Isn't it a fact that in this meeting you were made aware by Mr. Lawlor that he was seeking a position similar to the one from which he was fired at Gulf & Western?

A As a matter of fact, I asked him to bring the resumes to the luncheon meeting.; so that the fact was that --

(Pause.)

MR. REINER: Is there a question outstanding?

MR. STOLZER: Would you read the question again, sir?

(Question and answer read.)

A -- that there was no clear indication that he was specifically looking for ajob such as he had at Gulf & Western.

Q Did you offer to send him to the top five companies?

A No, sir, I did not.

MR. STOLZER: No further questions.

MR. REINER: I have no further questions, your

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Honor.

MR. STEIN: I have no questions, your Honor.

THE COURT: I would tell you before you leave the stand, as I regard it, you have no privilege not to reveal your sources that you used to check this. I think the plaintiff's interest here in getting at the truth in this case far outweighs any privilege that you might think you have, so I direct you to disclose those sources for the last time, to identify the sources you checked.

THE COURT: May I ask for an adjournment for five minutes, your Honor?

THE COURT: Sure.

THE WITNESS: To confer with my counsel?

THE COURT: Sure.

(Recess.)

C Y N T H I A B I L L I N G S, resumed:

THE COURT: Have you conferred with counsel?

THE WITNESS: Yes, I have.

THE COURT: And are you going to comply with the Court's direction or not?

THE WITNESS: Contrary to the advice of my counsel, your Honor, I feel that I cannot reveal the names of my sources.

THE COURT: Do you refuse todo it despite the

mbbr 90 Billings-

Court's direction to do so?

THE WITNESS: Yes, sir, I am afraid so.

THE COURT: All right.

MR.STOLZAR: I have no further questions of this witness, your Honor.

THE COURT: Do you have any motions at this time?

MR. REINER: I have no question at this time.

THE COURT: No, I am asking plaintiff's counsel.

MR. STOLZAR: If your Honor please, at this time I move that the testimony of the witness Cynthia A. Billings be stricken from the record on the ground that she has filed and refused to answer the Court's direction to answer questions.

MR. REINER: May I be heard, your Honor.

I specifically made reference before to the Civil Rights Law, Section 79H of the State of New York and I again submit to your Honor that under that statute Miss Billings is a journalist as a resident of the State of New York, this is a publication published in the State of New York, has a right to invoke that.

THE COURT: It is published throughout the United States.

MR. REINER: Yes, your Honor, but it is published in the State of New York and she is a citizen of the

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State of New YOrk and that a citizen as a citizen of the State of New York has a right to invoke the statute.

THE COURT: I don't think so and I don't think we get to the constitutionality of the statute. I think under Garland v. Torre 259 Fed. 2d 545, she has a plain duty to answer the question.

MR. REINER: Your Honor, I respectfully submit this statute was passed subsequent to that case.

THE COURT: I am aware of that.

MR. REINER: It was passed for that specific purpose and intent, and as a citizen of the state this is a diversity action, your Honor.

THE COURT: I am aware of that.

MR. REINER: Your Honor is sitting here as if he were a state court judge replying to law of the State of New York and I submit if this action were pending in the State Court of New York, the Judges of the State of New York would apply the statute and enforce the statute.

MR. STOLZAR: May I be heard on the subject.

THE COURT: I don't think I need argument.

MR. REINER: Your Honor, may I submit a memorandum of law on this?

By the way, your Honor, this was raised last June, your Honor, and really if motions had been made to the --

THE COURT: I don't see how you could raise it short of putting the witness on the stand.

MR. REINER: Your Honor, the witness was deposed a month ago and we took the Shield Law.

THE COURT: She could still have changed her mind.

MR. REINER: No, your Honor, consistently we have asserted this privilege since June, your Honor.

THE COURT: I don't put any stock in that.

MR. REINER: As a matter of fact, your Honor --

THE COURT: All right, I will grant the motion to strike her testimony. I will go further. We will strike her answer. She has made it impossible for you to sustain your burden of proof as to that and they can't have it both ways. We will strike the answer and grant judgment in your favor as to Gallagher.

MR.REINER: May I renew my application that under the Gertz decision the plaintiff has failed as part of the prima facie case to prove any fault whatsoever. It is plaintiff's burden of proof, your Honor, not the defendants here. Under Gertz it is the plaintiff's and it has failed to be done.

THE COURT: Which has been utterly frustrated, the burden of proof, by your wilful failure to disclose the

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sources and there is absolutely no way of proving it.

MR. REINER: Your Honor, may I make one further application to the Court.

Your Honor, as a matter of law, the truth to a defamation is independent of the sources, and if in fact the statements made were true, there is a complete defense, an absolute defense, that has nothing to do with sources, your Honor. And that as far as that is concerned we are entitled to a judgment dismissing the complaint because every single statement was true.

THE COURT: I have already directed the entry of judgment against your cleint, period. You may step down.

MR. STEIN: Your Honor, may I be heard?

THE COURT: Unless you wish to cross examine.

MR. STEIN: No, I do not wish to be heard on a motion for dismissal as to the Gulf & Western defendants.

THE COURT: Wait. We are not through yet.

Have you rested?

MR. STEIN: Yes.

MR. STOLZAR: If your Honor pleases, may I ask just one more question?

THE COURT: Have you rested?

MR. REINER: Except that I renew my motions to

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dismiss.

THE COURT: Have you rested as far as your proof goes?

MR. REINER: As far as my proof goes, yes, your Honor.

THE COURT: All right.

Have you rested?

MR. STOLZAR: Yes, your Honor, as far as proof is concerned.

THE COURT: All right.

MR. REINER: Your Honor, may I consult with my client once more in an attempt to try to resolve this? Thank you, sir?

MR. REINER: May we be excused again?

THE COURT: Sure.

MR. REINER: Thank you.

THE COURT: Recess for lunch until 2:15.

(Luncheon recess.)

AFTERNOON SESSION:

(In the robing room. Present: Mr. Stolzar, Mr. Stein, and Mr. Reiner.)

THE COURT: Let the record reflect that in conference with counsel, it is agreed by counsel for all parties that this testimony which we are about to take be taken in camera except for the presence of counsel and the witness, the reporter, my two law clerks, and the Judge and one counsel for each side, and that this part of the transcript be sealed and not disclosed to any other party without the order of the Court.

Is that fair?

MR. REINER: Thank you.

THE COURT: So agreed, gentlemen?

MR. STEIN: It's agreed, your Honor.

MR. STOLZAR: So agreed.

THE COURT: All right, proceed.

(The following portion of the minutes of the trial were sealed by order of the Court.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MATTHEW J. LAWLOR,

Plaintiff,

-against-

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

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OPINION

APPEARANCES:

Richard Ives Rudell and Davis J. Stolzar, New York City, for plaintiff.

Townley, Updike, Carter & Rodgers, New York City, for The Gallagher Presidents' Report, Inc. and Cynthia A. Billings; John Paul Reiner and Raymond J. Soffientini, of counsel.

Proskauer Rose Goetz & Mendelsohn, New York City, for Gulf & Western Industries, Inc., David N. Judelson and Martin S. Davis; Steven J. Stein and Jonathan M. Herman, of counsel.

MacMAHON, District Judge.

Plaintiff Matthew J. Lawlor, former vice-president of employee relations at Gulf & Western Industries, Inc. ("G & W"), brings this diversity action for

libel alleging three claims for relief. The parties waived a jury and the case was tried to the court.

The first claim, brought against defendants David N. Judelson and G & W, alleges that Judelson, in his capacity as president of G & W, during a meeting held April 26, 1973, "in the presence of plaintiff and other persons," uttered the following false and defamatory statements of and concerning plaintiff: ". . .You went crazy this last year -- you have been grossly guilty of conflict of interest," and "[y]ou and that McDermott set up the Mark Group, opened a bank account and hoped to get away with a great deal of money. . . ." Upon the trial, plaintiff was allowed to amend his complaint to allege that during the meeting Judelson also made other statements, set forth in the margin,[1] which are alleged to be false and defamatory.

The second claim, brought against defendants G & W and Martin S. Davis, alleges that Davis, in the course of his employment as senior vice-president of G & W, falsely stated to defendant Cynthia A. Billings, president and editor of The Gallagher Presidents' Report, Inc. ("Report"), or to one of its employees, that "plaintiff had extracted fees from GULF for placement of executives with GULF" and that as a result of Davis's statement "BILLINGS caused REPORT to publish the said statement by DAVIS in its

May 22, 1973 edition of 'The Gallagher Presidents' Report.'"

The third claim, brought against Davis, Billings and Report, alleges that Davis maliciously intended that his statements to Billings be published in Report and that on May 22, 1973 defendant Billings maliciously caused Report to publish the following matter of and cerning plaintiff:

> "'CHARLIE WONDERFUL' BLUHDORN CRACKS DOWN ON EXECUTIVES. Gulf + Western Industries chairman forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as v-p employee relations. Lawlor in charge of G+W personnel department. Reportedly set up dummy corporation Mark Group. Opened bank account for dummy corporation. Channeled unsolicited job resumes to Mark Group. Extracted fees for placement of executives with G+W. Charlie eliminates title. Turns over Lawlor's duties to director of personnel David Foreman." (Emphasis supplied.)

Plaintiff claims that, as a consequence of the alleged defamation, he was forced to resign from G & W, has been unable to obtain other employment, has been damaged in his reputation and credit, and has suffered pain and mental anguish, all to his damage, in the amount of $2,000,000 on each claim.

Defendants G & W, Judelson and Davis deny the substance of each of the allegations and allege affirmative defenses of failure to state a claim, truth, fair comment, good faith and qualified privilege based upon both interest and duty, and counterclaim for relief in the form of a judgment directing plaintiff to account for, and pay over to G & W, all of the proceeds he received from his unauthorized exploitation of special knowledge, resources and information belonging to G & W which had been entrusted to him. Alternatively, these defendants seek damages arising out of plaintiff's breach of his fiduciary duties as a corporate officer.

Defendants Report and Billings generally deny the allegations of the third claim, but admit the publication of the alleged defamatory article and assert the affirmative defenses of failure to state a claim, truth and privilege under the First Amendment.

CHOICE OF LAW

Since jurisdiction is based on diversity, we

must apply the choice of law rules of New York, the forum state.[2] The applicable New York rule requires a "governmental interests analysis" which looks to "the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties has the greatest concern with the specific issues raised in the litigation."[3]

The specific issues raised here involve alleged slanderous and libelous statements made in New York. The individual defendants were all employed and present in New York City when the statements were made, and each of the corporate defendants has a principal place of business in New York. All parties agree that New York law applies. We will, therefore, apply New York law since New York appears to have the most significant contacts with the issues and the parties and the greatest interest in having its law apply.[4]

We turn now to consideration of the first claim.

PLAINTIFF'S FIRST CLAIM

The testimony upon the trial established that plaintiff, as G & W's vice-president of employee relations, was entrusted with the resumes and applications for employment submitted by persons seeking positions with G & W.

In early 1973, G & W hired a private investigator, Jeremiah McAward, to investigate internal "leaks" of

confidential information and breaches of security at G & W. The investigation, including a search of plaintiff's desk and file cabinets, revealed that plaintiff and certain of his subordinates had apparently set up their own executive recruiting firm, known as the "Mark Group;" appropriated resumes and applications submitted to G & W; sought to place such applicants with outside companies on a commission basis; opened a bank account in Stamford, Connecticut, near plaintiff's home; and had a mailing address and telephone answering service in Stamford.

McAward reported this information to Judelson, and on April 26, 1973, Judelson, Davis, Bob Jones (G & W's counsel) and McAward met in Judelson's New York office. After discussing McAward's report, a tape recorder was set up and plaintiff was called into the meeting for an explanation. Transcripts of the recordings were received in evidence, and there is no dispute that the statements spoken at that meeting were those alleged by plaintiff. The essential issue, therefore, on this first claim is whether the statements were defamatory.

Under New York law, injury to reputation is the gist of an action for defamation. Any published communication, spoken or written, of and concerning the plaintiff, without lawful justification or privilege, which accuses him of a crime[5] or tends to expose him to public contempt, scorn, obloquy, ridicule, shame or disgrace, or to induce

an evil opinion of him in the minds of right-thinking persons, or to injure him in his profession, occupation or trade, is defamatory.[6]

Essentially, Judelson accused plaintiff of engaging in conflicting self-interest by establishing and operating an outside executive employment agency known as the "Mark Group," misappropriating resumes sent to G & W by executivies seeking employment, giving them to the Mark Group, placing the executives with outside companies for commissions, and wrongfully using time, manpower and material belonging to G & W for the benefit of the Mark Group. These statements unquestionably injured Lawlor's reputation, exposed him to shame and disgrace, and injured him in his profession and occupation, and were, therefore, defamatory if false.

Plaintiff admits that he formed and operated the Mark Group, substantially as stated by Judelson, but contends that the statements were, nevertheless, false because Judelson knew that the Mark Group was formed and its activities conducted solely for the benefit of G & W, that any profits made by the Mark Group were segregated and always belonged to G & W, and that Judelson gave him permission to embark on that venture on an experimental basis.

According to plaintiff's testimony, the idea originated from the fact that G & W is a large conglomerate

corporation engaged in many diversified industries, employing hundreds of executives, and needing a reliable source for recruiting new talent. Lawlor, therefore, aware that there was undoubtedly considerable executive talent within the organization, approached Judelson with the idea of forming an in-house search company for recruiting and placing executives within G & W. Such a plan, Lawlor thought, would not only save the fees paid by G & W to outside search firms but also generate profits for G & W from fees charged for placing executives with outside corporations.

According to Lawlor, Judelson told him that if the company were successful, it would become a separate profit center for G & W. Although his testimony is unclear on the point, Lawlor implied that Judelson approved the plan of establishing such a company on an experimental basis. Lawlor, therefore, set up an executive employment agency, opened a bank account and gave the company an address and telephone listing, all under the name of the Mark Group, in Stamford, Connecticut, because he thought the placement business of the company would be more successful if it were not identified with G & W and because he did not want a company identified with G & W unless and until it became successful.

Except for admitting that he discussed the subject of an in-house search program with Lawlor, Judelson's

testimony is in direct conflict with Lawlor's. Judelson testified that he expressly forbade Lawlor to form any organization for the purpose of placing executives applying for positions with G & W with any other corporation for fees. Referring to the alleged slanderous statements, he testified that he was simply confronting Lawlor with the fact that he had disobeyed instructions and calling on him for an explanation.

The transcript of the April 26 meeting is informative. It reveals that Judelson asserted, without denial, contradiction or even a defense by Lawlor, that when Lawlor had approached Judelson in 1972 about forming a G & W enterprise for placing executive applicants with outside corporations for fees, Judelson had indeed rejected the idea.

In light of Judelson's unimpeached trial testimony, corroborated by the transcript of the April 26, 1973 meeting, we conclude that Judelson rejected the idea of setting up an executive placement agency, whether as a G & W company or otherwise, and forbade Lawlor to engage in such placement activities for fees and ordered him to confine his activities to organizing resumes of all executives in G & W subsidiaries to facilitate filling internal vacancies when they occurred.

On cross-examination, plaintiff admitted that Judelson had ordered him to terminate the employment of

Richard Boester, G & W's director of personnel, serving under plaintiff. Plaintiff, nevertheless, offered the presidency of the Mark Group to Boester and suggested that he invest his termination pay from G & W in the Mark Group. Lawlor also admitted offering David Biondi, a G & W tax lawyer slated for termination, a job as general counsel to the Mark Group. The undisputed facts show that plaintiff established a bank account in Stamford, Connecticut, under the name of the Mark Group, although the policy of G & W required that the accounts of any subsidiary company of G & W be conducted by the vice-president in charge of banking affairs. Plaintiff also established a mailing address and answering service for the Mark Group in Stamford, Connecticut.

An examination of the testimony of Lawlor and Biondi, as well as an organizational chart prepared by Lawlor, shows that the Mark Group was to be part of a system called "MJL Enterprises." Plaintiff admitted that MJL Enterprises was an extension of himself, Matthew J. Lawlor, and that he took $14,870 worth of deductions under its name on his 1973 personal income tax return. Plaintiff also admitted that he did not discuss the Mark Group project with any of his superiors during the period of its operations.

In addition, McAward's investigation revealed that plaintiff was using his time, that of G & W's employees,

and G & W's facilities and materials for the work of the Mark Group.

These facts compel the conclusion that Lawlor was operating the Mark Group as a private business venture of his own, in no way connected with G & W, and that he did not have the intention of making the Mark Group a G & W corporation when, as, and if it became successful.

The conflict of interest policy statement of G & W provides, in pertinent part:

> "To avoid the possibility that conflicts of interest may arise or exist between the company and its employees, no employee shall have any relationships or engage in any activities which will impair their independence or judgment. . . . If any possible conflict of interest arises, the individual employee must disclose all facts relating thereto to his immediate superior."

Lawlor, through the activities of the Mark Group, assumed a position of conflicting self-interest which tempted him to favor the Mark Group, his own employment agency, to the disadvantage of G & W, by placing executives who had applied

to G & W with outside corporations for a fee, instead of placing them with G & W. This plainly conflicted with his fiduciary duty of loyally recruiting the best executives for G & W. Moreover, he misappropriated the executive resumes and misapplied the time and talents of G & W's personnel, as well as its materials, for his personal advantage. Finally, he failed to disclose any of these activities to Judelson, his immediate superior. Lawlor, thus, placed himself in a position of conflicting self-interest with his employer.

We conclude, therefore, that Judelson's statements about Lawlor at the April 26 meeting were essentially true. Since truth is a complete defense to liability for defamation[7], there is no need to consider the other defenses raised by defendants, and, accordingly, we dismiss the first claim against G & W and Judelson.

We turn now to consider plaintiff's second claim.

PLAINTIFF'S SECOND CLAIM

Here, plaintiff alleges that Davis, in the course of his employment with G & W, stated to Report's editor, Billings,[8] or to one of its employees, that "plaintiff had extracted fees from GULF for placement of executives with GULF." Plaintiff further alleges that the statement was false and defamatory and that defendant Billings caused Report to publish the statement, all to plaintiff's damages.

We will later discuss the defamatory nature of the alleged statement, but, assuming that the statement is defamatory, plaintiff still cannot recover on his second claim.

Plaintiff offered no direct evidence that Davis ever made any statement, defamatory or otherwise, about him to Billings or to anyone else connected with Report. Instead, he testified that Davis harbored animosity toward him because of an incident in which he had embarassed Davis in front of top management and because of rumors he had heard from other executives to the effect that Davis was out to get him. On the basis of nothing but this flimsy evidence, plaintiff asks us to draw the inference that, since Davis was present when Judelson's statements were made, Davis was the person who conveyed the defamatory statements about plaintiff's Mark Group activities to Billings and Report. We think the evidence insufficient to support the inference which plaintiff seeks to draw.

Davis testified unequivocally that he did not communicate with Billings or anyone else concerning plaintiff, the statements made at the April 26 meeting or the Mark Group incident. Davis is corroborated by Billings, who testified, in camera, where she revealed her sources, and Davis was not among them.

Finally, Lawlor testified on cross-examination that he had discussed the April 26 meeting with four of

his associates. Since it is just as likely that one of those persons repeated the story to others, we cannot draw the inference that Davis was the person who spread the contents of the April 26 conversation either directly to Billings, to anyone connected with Report or to any one of Report's sources.

Accordingly, we dismiss the second claim against Davis and G & W for failure of proof.

We turn to consideration of plaintiff's third claim, which is brought against defendants Report, Billings and Davis.

PLAINTIFF'S THIRD CLAIM

Here, plaintiff reasserts the second claim's allegations against Davis[9] and adds that Billings caused Report maliciously to publish an allegedly defamatory article about him in its May 22, 1973 edition, which stated:

> "'CHARLIE WONDERFUL' BLUHDORN CRACKS DOWN ON EXECUTIVES. Gulf + Western Industries chairman forced to oust Matthew Lawlor two weeks ago after discovery of questionable practices by Lawlor as v-p employee relations. Lawlor in charge of G+W personnel department. Reportedly

> set up dummy corporation Mark Group. Opened bank account for dummy corporation. Channeled unsolicited job resumes to Mark Group. Extracted fees for placement of executives with G+W. Charlie eliminates title. Turns over Lawlor's duties to director of personnel David Foreman."

There is no dispute that the above article was published of and concerning plaintiff. We turn, therefore, to consideration of whether the article is defamatory.

Plaintiff contends that the statement "[e]xtracted fees for placement of executives with G+W" is false and defamatory and so distorts the story as to make the entire article false and defamatory. In determining whether words are defamatory, New York law teaches that words must be defined as persons generally understand them in the context in which they are used.[10] The first phrase of the statement is "[e]xtracted fees." "Extracted," used together with "fees," can only mean "to draw forth against a person's will"[11] or "to extort."[12] The second part of the statement reads "for placement of executives with G+W." Read in context, a reader would undoubtedly understand the statement to mean that plaintiff formed the Mark Group as a dummy corporation, channeled unsolicited job resumes of executives seeking employment with G & W to the Mark Group,

and used his position as G & W's vice-president of employee relations to compel "kickbacks" from executive applicants to G & W as a condition to placing them with G & W. The statement, if false, is therefore libelous since it accused plaintiff of a crime,[13] specifically, violating New York's kickback statute.[14]

Even assuming that the statement did not accuse plaintiff of criminal conduct, it was, nevertheless, libelous because it clearly intended to expose him to shame or disgrace, induce an evil opinion of him in the minds of right-thinking persons, and injured him in his occupation and profession as a specialist in employee relations.[15]

We will now determine whether the statement was false, as plaintiff contends, or substantially true, as defendants contend.

The question to be answered, as formulated in Fleckenstein v. Friedman, 266 N.Y. 19, 23 (1937), is "whether the libel as published would have a different effect on the mind of the reader from that which the pleaded truth would have produced." Plaintiff argues that the challenged statement is entirely false. Defendants[16] argue that, although plaintiff did not extract fees for placing executives with G & W, he did charge a fee for placing a G & W tax lawyer, David Biondi, with Raybestos-Manhattan, an outside corporation, and that the difference

between that act and those charged in the statement is insignificant in terms of its effect on the reader.

We turn now to an examination of the evidence in light of the contentions.

Lawlor's uncontradicted testimony is that he placed only two exectuvies through the Mark Group. The first executive, Charles Tomlinson, was in no way connected with G & W. He was placed by Lawlor with an outside corporation, Polymer Industries, which then paid a fee to the Mark Group for services rendered.[17] Plaintiff also charged a fee, through the Mark Group, for placing David Biondi, a G & W tax attorney, with Raybestos-Manhattan, also an outside corporation. Lawlor further testified, without contradiction, that Judelson had ordered him to find a job for Biondi with an outside corporation as a way of getting rid of him. Plaintiff was in the process of doing so when he was approached by Lee Zetlin, who ran a search firm and was looking for a tax lawyer on behalf of Raybestos-Manhattan. Lawlor and Zetlin then successfully placed Biondi and split the fee. Lawlor deposited the fees for both of these transactions in the Mark Group's bank account.

This undisputed evidence shows unmistakably that plaintiff, however questionable his practices, did not extract a fee from unwilling executives for placing them with G & W. Indeed, neither executive paid any fee at all to

anyone. Instead, the true fact, which was omitted from the article, was that two outside corporations willingly paid fees to Lawlor, through the Mark Group, for recruiting executives for them.

Although publication of the truth would undoubtedly cause the reader to conclude that Lawlor deserved censure for engaging in a conflict of interest, it could not conceivably have led the reader to conclude that Lawlor was guilty of taking kickbacks for performing his duty of placing executives with G & W. The published statement, therefore, so distorted the truth and magnified the wrong that it unquestionably made a graver impact and inflicted more devastating injury on plaintiff's reputation in the mind of the reader than the truth would have produced.

We find, therefore, that the statement "[e]xtracted fees for placement of executives with G+W" was false and that its publication so distorted the truth as to make the entire article false and defamatory.

We turn now to consideration of whether the statements and article were privileged under the First Amendment.

It appears from the evidence that plaintiff holds no public office, does not have general fame or notoriety in the community, has no pervasive involvement

in public affairs and has not injected himself into a public controversy. He is, therefore, neither a public official nor a public figure.[18] Defendants conceded as much upon the trial but, nevertheless, contend that since plaintiff was a high corporate executive in one of the "top 100 corporations" and Report is directed exclusively to that group, we should find that plaintiff was a limited public figure for the limited public event of the Mark Group incident and allow them to invoke the qualified privilege of New York Times Co. v. Sullivan, 376 U.S. 254 (1964). We think the contention untenable for such a rule would sweep all corporate officers under the restrictive New York Times rule and distort the plain meaning of the public official or public figure category beyond all recognition.

Clearly, the State of New York has a strong and legitimate interest in compensating private individuals for actual injury to reputation, but under Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), it may not permit recovery of presumed or punitive damages at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth.

A newspaper or periodical which publishes defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim a constitutional privilege against libel for the actual injury

inflicted by those statements. As the Supreme Court said in Gertz, supra, 418 U.S. at 340-347:

> "[T]here is no constitutional value in false statements of fact. Neither the intentional lie nor the careless error materially advances society's interest in 'uninhibited, robust, and wide-open' debate on public issues. . . .
>
> The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted upon them by defamatory falsehood. . . . [S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."

Consequently, the Supreme Court held that, when the substance of the defamatory statement makes substantial injury to the reputation apparent, the state is free to allow recovery of compensatory damages by a private individual for injury to his reputation caused by a defendant's negligence in publishing false and defamatory statements

about him. Examination of New York decisions since Gertz shows that the New York courts have adopted its negligence standard.[19]

There is no showing here that defendants had actual knowledge that the article was false. We turn, therefore, to consideration of whether defendants published the article with reckless disregard of whether it was false or not or was negligent.

Billings testified that her original source for the article was a professional journalist known to her for approximately six years. She said:

> "The information I received was that Mr. Lawlor at Gulf & Western had recently been ousted due to some questionable practices involving an organization called the Mark Group which involved using unsolicited resumes, and that there were fees involved in working with these unsolicited resumes."[20]

It is clear that Billings's initial source did not inform her that Lawlor had "extracted fees for placement of executives with G & W" but had given her a generalized and incomplete version of what had occurred.[21] Billings then gave this information to Robert Kenney, associate editor of

Report, and when asked what Kenney did to confirm the information she replied:

> "Well, Mr. Kenney had reported back to me that the information which I had given him checked out, and that his sources confirmed what my sources had given me."22

Billings also testified that Kenney told her that he had telephoned G & W to contact Lawlor, but that G & W had informed him that Lawlor was no longer there and had left no forwarding address. Billings's testimony about what Kenney told her is, of course, hearsay, but, even if we accept the hearsay, it amounts to an admission by Billings that Kenney only confirmed the general version of the story given to her by her initial source.

There is no evidence whatever that Kenney even knew, much less investigated, any accusation or information that Lawlor had extracted fees for placing executives with G & W. It is also clear that Kenney made no attempt, beyond a perfunctory and futile telephone call to G & W, to locate Lawlor to seek his version of the story; nor did he seek to interview any other executive of G & W prior to publication.

Kenney was not called as a witness, and, except for stating that he was no longer in Report's employ, there

was no explanation for defendants' failure to call him. Beyond the hearsay, there is no evidence that Billings or Report made any effort whatever to check the accuracy of the false and defamatory article.

In light of these facts, we have no difficulty in concluding that defendants were negligent, for there can be no other plausible explanation for publication of the defamatory falsehood. Apparently, Billings carelessly distorted the information and magnified the wrong in order to sensationalize the story; or negligently misinterpreted the information she had been given; or negligently used inaccurate language to describe the true facts. Plainly, under any of those explanations, she was negligent both in interpreting the facts and in writing the article. Since each explanation involves negligence on the part of Billings, which is imputable to Report, we conclude that defendants were negligent and are liable to plaintiff for actual damages.[23]

DAMAGES

Upon a showing that a defendant negligently published a defamatory falsehood about him,[24] plaintiff can recover "actual damages," including, in addition to out-of-pocket injuries, damages for impairment of reputation and standing in the community, for personal humiliation, and for pain and mental anguish. All damages awarded must be

solely compensatory and supported by competent evidence showing the harm, although evidence of its dollar value need not be introduced.[25]

Plaintiff claims four items of damages: (1) inability to obtain other employment; (2) injury to reputation; (3) pain and mental anguish; and (4) injury to credit.

Plaintiff failed to introduce any evidence to support his claim that his credit was injured or impaired, and we therefore reject that item. Before discussing the remaining items, we must determine whether they were proved, and, if so, whether they were proximately caused by the negligence of defendants Billings and Report.

Plaintiff introduced evidence that he had a good reputation in the business community, which was undermined by Report's publication of the defamatory falsehood, and that this also caused him pain and mentail anguish. Plaintiff also introduced evidence that he was a well-educated, talented and industrious executive in the labor relations field. His position at G & W placed him in charge of labor relations of a major multi-diversified company. He had been called to Washington, D.C., to discuss a position as undersecretary of labor. He was in his mid-forties, with bachelor and master's degrees from prestigious colleges, happily married, the father of two children, and a veteran

of the United States Marine Corps.

It was established at trial that, before the article was published, the Mark Group controversy was not well known to the business community. Indeed, G & W maintained strict silence about the controversy, and the facts show that only a few individuals outside of G & W knew about it.

Report, by publishing the defamatory falsehood and circulating it to the business community, proximately caused harm to Lawlor's reputation and caused him to suffer great pain and mental anguish. William McCulloch, an executive search consultant, testified that Report was "public" to the business community. This testimony is supported by Billings's own admission that Report is directed almost exclusively to executives of the "top 100 corporations."

Since we have already held that the article reported that plaintiff was involved in criminal conduct in the performance of his duties as a G & W vice-president, we conclude that defendants' conduct proximately caused damage to plaintiff's reputation in his profession as a personnel director in the business community.

Plaintiff, by his demeanor and testimony, evidenced that he had suffered great pain and mental anguish as a result of the publication of the defamatory falsehood.

Since his graduation from college in 1953, plaintiff had worked hard to establish his reputation as an expert in the labor relations field. Report, by publishing this falsehood about him, undermined twenty years of hard work and humiliated him before the community which had formerly recognized him as an expert.[26]

Plaintiff also claims that defendants' negligence is the cause of his inability to secure new employment. Plaintiff was forty-three years old at the time of the libel and contends that he is entitled to damages from that time until he reaches retirements, at the rate of $95,000 per year.

It is undisputed that Lawlor's inability to obtain employment is caused by (1) G & W's justified failure to recommend him, and (2) defendants' negligent publication of the defamatory falsehood about him. Under New York law, when two or more causes combine to produce a single result incapable of any logical division, such as plaintiff's inability to get a job, a determination must be made as to which cause was the substantial factor in bringing about the event.[27]

Plaintiff contends that, although G & W's refusal to hire him may have affected his ability to secure employment, the substantial cause of his inability to get a job is the publication of the false and defamatory article about him.

Plaintiff has the burden of proving that the publication of the falsehood was a material element or substantial cause of his inability to get a job. Plaintiff's own expert witnesses, Christopher Christian and Everard Lawrence, executive placement consultants, point instead to G & W's justified refusal to recommend him as the substantial cause of his joblessness. Christian testified that he stopped any attempts to place plaintiff with Sunshine Biscuit Company when G & W would not recommend him. Lawrence testified that, even before the article was published, he had withdrawn a job offer made to plaintiff because G & W would not recommend him. Since plaintiff has not proved that defendants' negligence was a substantial cause of his inability to secure employment, we need not address the question of damages in respect to this claim.

Since plaintiff has proved that defendants' negligence caused serious damage to his reputation and caused him to suffer pain and mental anguish on his part, we find that damages for those injuries are appropriate. We do, however, mitigate the damages herein awarded by taking into consideration Lawlor's conduct, which was by no means free from wrong. We thus conclude that $45,000 is a fair recovery against defendants Billings and Report under the circumstances.

G & W'S COUNTERCLAIM AGAINST LAWLOR

G & W counterclaims against plaintiff for declaration of a constructive trust on its behalf of all profits made by the Mark Group and for damages.

At trial, G & W abandoned its claim for damages but presented evidence to support its claim for declaration of a constructive trust. G & W contends that, since Lawlor admitted that the Mark Group recived $11,700 in fees and conceded that these fees always belonged to G & W, we should declare a constructive trust in that amount for G & W.[28]

The law of New York provides that when an employee of a corporation takes confidential information from it and uses such information to benefit his own enterprise, thus placing himself in a conflict of interest, the employer is entitled to the declaration of a constructive trust of all profits made by the enterprise.[29]

Plaintiff argues that, although the Mark Group originally made $11,700 in profits, he authorized that $3,000 of these profits be paid to Stephen Markham, as salary for working for the enterprise, and that this amount should be deducted from the $11,700. However, plaintiff admitted that he paid the $3,000 to Markham without authorization from G & W.

We conclude, therefore, that plaintiff must turn over $11,700 to defendant G & W. We impose a constructive trust of $8,698.50, now on deposit in account No. 27-45804 at the New York Bank for Savings, in the name of Richard Ives Rudell, and direct Rudell to turn over this fund to G & G. We grant judgment for $3,001.50, the difference between the amount on deposit and the $11,700, against plaintiff in favor of defendant G & W.

The foregoing opinion constitutes this court's findings of fact and conclusions of law, in accordance with Rule 52, Fed.R.Civ.P.

Accordingly, we grant judgment:

(1) in favor of defendants David N. Judelson and G & W against plaintiff dismissing the first claim for relief;

(2) in favor of defendants Martin S. Davis and G & W against plaintiff dismissing the second claim for relief;

(3) in favor of plaintiff against defendants Report and Cynthia A. Billings on the third claim for relief, in the amount of $45,000;

(4) in favor of defendant Martin S. Davis against plaintiff dismissing the third claim for relief;

(5) in favor of defendant G & W against plaintiff on the first, third and fourth counterclaims imposing a constructive trust of $8,698.50, now on deposit in account No. 27-45804, at the New York Bank for Savings in the name of Richard Ives Rudell, and directing Rudell to turn over this fund to G & W;

(6) in favor of defendant G & W against plaintiff on the first, third and fourth counterclaims, in the amount of $3,001.50; and

(7) in favor of plaintiff against defendant G & W dismissing the second counterclaim.

Settle judgment and decree within ten (10) days.

Dated: New York, N. Y.
May 13, 19[illegible]

s/Lloyd F. MacMahon
LLOYD F. MacMAHON
United States District Judge

FOOTNOTES

1

"You don't feel, Matt, that there's any conflict of interest between your getting resumes here and giving them to the Mark Group, and having them place the people and getting a fee? Right."

"You, in fact, Matt, have gotten letters, from people, looking for jobs, innocently, that have been under the Mark Group letterhead, sent to people. You have received fees from Bushee and from, uh, uh, on this one placement - the fellow's name is Dambrosky, eh. . . ."

"I would say this Matt, that primarily is on the basis of this. I would say that if is, it has nothing to do what, what I consider to be totally fraudulent. I think your whole story here, is a, is a nice composite of what you think might be a plausible rationale for the whole situation, but I want to tell you that it absolutely defies gravity, I mean I refuse to accept anything you said Matt, I know exactly what was set up, I wasn't born yesterday. This company didn't get built by a bunch of idiots who happen to reside on the 42nd Floor, Matt. We are really not stupid, or if we were, this company wouldn't be as big as it is. I find it, Matt, a disgrace, that an officer of this company would enter into something like this, unbeknown to myself, who you reported to, as an absolute subterfuge to go ahead and take fees in a situation where you obviously had all of the ability to get people who would write here for resumes and put them in, I could even see you placing Mr. Boester, your own employee."

"I think it is entirely fraudulent Matt, it's an insult to my intelligence and everybody else's sitting in here that you would give this rationale for this story, you know it for what it is, I know it for what it is, Mr. McDermott definitely knows it for what it is, that there was an employee here receiving $21,000 a year in the name of this man, right? What was using his secretary to type up resumes."

"Now Matt, I told you, I gave you confidence when you came here, you did not return it Matt, in fact, you might have flipped a gear someplace along the line here, and is very obvious in case you want to know about it the Management Resources opened up your eyes to what could be done outside of the company, rather than inside of the company, and that's why the Mark Group was formed."

"But I want to tell you Matt, I'm not going to stand for it, I won't have for one second. I think that you must have been absolutely crazy, Matt. I'm not trying to give you a lecture, but you have gone ahead and you've ruined the job that you have here, you can get no recommendation from me, Mr. Lawlor for any possible job."

"And I can really throw it at you, Matt. I could give you so much trouble, that you'll never want to wake up. Now, I'm not going to do that for one reason, Mr. Lawlor, I know you have a family, and I feel for your kids, I want to tell you that. And I shouldn't feel this way, and I know God-damned well I shouldn't, because I should be as high as my standards are with regard to this. I should be just that tough, too, when it comes to something like that."

"But don't expect me, or anybody else in this room, or anybody else on this floor, to accept the God-damned travesty that you've tried to perpetrate as the, as the purpose behind doing this whole thing. It is so deceitful, Matt, that it's even unbecoming to you to sit here and try to tell me that. Do you think I'm that stupid - do you really think that?"

2

Klaxon Co. v. Stento[illegible] Elec. Mfg. Co., 313 U.S. 487 (1941); Rosenthal v. Warren, 475 F.2d 438 (2d Cir. 1973).

3

Babcock v. Jackson, 12 N.Y.2d 473, 481, 240 N.Y.S.2d 743, 749 (1963).

4

At trial, the parties agreed that New York law applied for determination of all issues.

5

Berkson v. Time, Inc., 8 App. Div. 2d 352 (1st dep't), 187 N.Y.S.2d 849 (1959), aff'd, 7 N.Y.2d 1007, 200 N.Y.S.2d 51 (1960); Frechette v. Special Magazines, Inc., 285 App. Div. 174 (3d dep't), 136 N.Y.S.2d 448 (1954).

6

Hahn v. Andrello, 44 App. Div. 2d 501 (4th dep't), 355 N.Y.S.2d 850 (1974); Kimmerle v. New York Evening Journal, Inc., 262 N.Y. 99 (1933); W. Prosser, Law of Torts § 106, at 756 (3d ed. 1964).

7

Curtis Pub. Co. v. Butts, 388 U.S. 130 (1967); Crane v. New York World Telegram Corp., 308 N.Y. 470 (1955).

8

Neither Report nor Billings is named as a defendant in the second claim.

9

Our dismissal of the second claim against defendant Davis also requires dismissal of the third claim as to him.

10

Crane v. New York World Telegram Corp., supra; Tracy v. Newsday, Inc., 5 N.Y.2d 134, 182 N.Y.S.2d 1 (1958). In analyzing the article, we will assume that the reader had no independent knowledge of the April 26, 1973 meeting.

11

Oxford English Dictionary (1971).

12

The Random House Dictionary of the English Language (1969).

13

Berkson v. Time, Inc., supra; Frechette v. Special Magazines, Inc., supra.

14

Section 198-b(2) of the N.Y. Labor Law (McKinney 1965, Supp. 1975), entitled "Kickback of Wages Prohibited," reads, in pertinent part, as follows:

"Whenever any workman who is engaged to perform labor shall be promised an agreed rate of wages for his services . . . it shall be unlawful for any person . . . to request, demand, or receive either before or after such workman is engaged, a return, donation or contribution of any part or all of said workman's wages, salary, or other thing of value, upon the statement, representation, or understanding that failure to comply with such request or demand will prevent such workman from procuring or retaining employment."

Section 198-b(5) of this statute provides that:

"A violation of the provisions of this section shall constitute a misdemeanor."

Article Six of the N.Y. Labor Law, of which § 198-b(2) is a part, was designed to regulate the wages paid to employees in New York. It spells out the procedures by which wages are to be paid and the civil and criminal penalties for failure to comply with these provisions. Section 198-a, the general criminal provision of Article Six, states that the criminal penalties of the Article apply to all employer-employee relationships. We conclude, therefore, that the New York Legislature did not intend that the term "workman" in § 198-b(2) be interpreted to refer only to manual laborers but intended that it be broadly construed to refer to any employee, including executive employees. Thus, the kickback statute would cover the acts Lawlor was accused of doing.

15

Hahn v. Andrello, supra.

16

In this section, "defendants" refer only to Billings and Report.

17

It is undisputed that corporations regularly pay fees to search companies for placing executives with them.

18

Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

19

The following New York decisions have applied the negligence standard where a private person, not involved in a public controversy, seeks to recover for publication of a defamatory falsehood about him: Caldwell v. Bantam Books, Inc. (Sup. Ct., N.Y. Co. 1974), reported in N.Y.L.J., Nov. 1, 1974, p. 17, col. 2; Bailey v. Hahn (Sup. Ct., Westchester Co. 1974), reported in N.Y.L.J., July 23, 1974, p. 12, col. 7.

Prior to Gertz, the New York courts allowed a private person, not involved in a public controversy, to recover simply by showing that defendant published a defamatory statement about him. See, e.g., Corrigan v. Bobbs-Merrill

Co., 228 N.Y. 58 (1920). This standard of strict liability was overruled by Gertz. See Gertz, supra, 418 U.S. at 347. However, since this prior New York standard was less restrictive than the negligence standard, we conclude that when the New York Court of Appeals is faced with the question, it will follow these lower court decisions and adopt the negligence standard.

20

Tr. 341.

21

Later in her testimony, Billings was asked the source of each statement printed in the May 22, 1973 article about Lawlor. She responded that she got each statement from her original source and that Kenny confirmed each statement with his sources. This testimony directly conflicts with her earlier testimony that she only obtained a general version of the Mark Group controversy and that Kenney confirmed this general version. We find that this later testimony is self-serving and strains credibility, and we, therefore, will disregard it.

22

Tr. 342-343.

23

Plaintiff, in ar attempt to obtain punitive damages, argues that defendants published the defamatory statement with reckless disregard for its truth or falsity. In order to establish that defendants published the falsehood with reckless disregard, plaintiff must show that defendants published it with a "high degree of awareness . . . of probably falsity." St. Amant v. Thompson, 390 U.S. 727, 731 (1968). An examination of the record reveals defendants Billings and Report did not publish the article with a high degree of awareness of its probable falsity, and plaintiff's contention is without merit.

24

See Caldwell v. Bantam Books, Inc., supra; Bailey v. Hahn, supra.

25

See Gertz, supra, 418 U.S. at 350.

26

We recognize that if Report had printed the truth about Lawlor's involvement with the Mark Group, his reputation would have been tarnished and this fact will be considered in mitigating the damages awarded to plaintiff.

27

See Dunham v. Village of Canisteo, 303 N.Y. 498 (1952); Cornbrooks v. Terminal Barber Shops, Inc., 282 N.Y. 217 (1940); Spector v. Mermelstein, 485 F.2d 474 (2d Cir. 1973).

28

G & W also contends that it is entitled to the compensation it paid to Lawlor during the period he operated the Mark Group. We are precluded from considering this claim as G & W failed to amend its pleadings to include it.

29

Sialkot Importing Corp. v. Berlin, 295 N.Y. 482 (1946); Harry R. Defler Corp. v. Kleeman, 19 N.Y.2d 694, 278 N.Y.S.2d 883 (1967).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

MATTHEW J. LAWLOR,

Plaintiff,

-against-

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

- x

73 Civ. 5443 (LFM)

JUDGMENT

The issues in the above-entitled action having been brought on regularly for trial before the Honorable Lloyd F. MacMahon, United States District Judge, on October 22, 23 and 24, 1974, and at the conclusion of the evidence the Court having reserved decision, and the Court thereafter on May 13, 1975, having handed down its opinion, constituting its findings of fact and conclusions of law, it is

ORDERED, ADJUDGED and DECREED:

(1) That plaintiff's first claim for relief against defendants David N. Judelson and Gulf & Western Industries, Inc., be and the same hereby is dismissed;

(2) That plaintiff's second claim for relief against defendants Martin S. Davis and Gulf & Western

Industries, Inc., be and the same hereby is dismissed;

(3) That plaintiff's third claim for relief against defendants The Gallagher Presidents' Report and Cynthia A. Billings be and the same hereby is granted, in the amount of $45,000;

(4) That plaintiff's third claim for relief against defendant Martin S. Davis be and the same hereby is dismissed;

(5) That the first, third and fourth counterclaims of defendant Gulf & Western Industries, Inc., against plaintiff, imposing a constructive trust of $8,698.50, now on deposit in account No. 27-45804, at the New York Bank for Savings, in the name of Richard Ives Rudell, and directing Richard Ives Rudell to turn over said $8,698.50 to defendant Gulf & Western Industries, Inc., be and the same hereby is granted; and, accordingly, that Richard Ives Rudell turn over the said $8,698.50 to defendant Gulf & Western Industries, Inc.;

(6) That the first, third and fourth counterclaims of defendant Gulf & Western Industries, Inc., against plaintiff in the amount of $3,001.50 be and the same hereby is granted; and, accordingly, that plaintiff pay to defendant Gulf & Western Industries, Inc., the amount of $3,001.50;

(7) That the second counterclaim of defendant Gulf & Western Industries, Inc., be and the same hereby is dismissed; and

(8) That the Clerk of the Court be, and the same hereby is, authorized to enter judgment for costs to be taxed.

Dated: New York, New York
May 27th, 1975

s/Lloyd F. MacMahon
U.S.D.J.

JUDGMENT ENTERED - 6/6/75

s/Raymond F. Burghardt
Clerk

7/7/75 - Bill of Costs as taxed in the sum of $1,107.73., in favor of plaintiff, as against defendants Gallagher Presidents' Report and Cynthia A. Billings, and added to the judgment.

s/Raymond F. Burghardt
Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

MATTHEW J. LAWLOR,

Plaintiff,

- against -

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

- x

73 Civ. 5443 (LFM)

NOTICE OF APPEAL

Notice is hereby given that The Gallagher Presidents' Report, Inc. and Cynthia A. Billings, two of the defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from that part of the final judgment entered in this action on the 6th day of June, 1975 in favor of the plaintiff, Matthew J. Lawlor, on the third claim for relief against the defendants The Gallagher Presidents' Report Inc. and Cynthia A. Billings.

Dated: New York, N. Y.
June 16, 1975

TOWNLEY, UPDIKE, CARTER & RODGERS

By: _____

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW J. LAWLOR,

Plaintiff,

-against-

THE GALLAGHER PRESIDENTS' REPORT, INC., CYNTHIA A. BILLINGS, GULF & WESTERN INDUSTRIES, INC., DAVID N. JUDELSON and MARTIN S. DAVIS,

Defendants.

73 Civ. 5443 (LFM)

ORDER

IT IS HEREBY ORDERED that that part of the transcript of the trial testimony of defendant Cynthia A. Billings ("Billings") consisting of pages 379 to 403 inclusive, ordered sealed by the Court at the request of defendants The Gallagher Presidents' Report, Inc. ("Report") and Billings on October 24, 1975, presently in the custody of the Southern District Court Reporters be delivered to the Clerk of the Court, and that said defendants be permitted to photocopy said sealed portion of the transcript for the limited use of the prosecution of said defendants' appeal from part of the judgment entered in this action on June 6, 1975; and

IT IS FURTHER ORDERED that upon completion of the photocopying of said portion of the transcript, the original thereof shall be made part of the record on appeal under seal subject to the conditions hereinafter provided; and

IT IS FURTHER ORDERED that the attorneys for defendants Billings and Report shall provide a copy of the aforesaid portion of the transcript to the attorneys for the plaintiff upon their request to be used only in accordance with the provisions set forth, herein; and

IT IS FURTHER ORDERED that the attorneys for defendants Report and Billings and plaintiff shall continue to preserve and maintain the confidentiality of said sealed portion of the transcript, specifically the names or identities of said defendants' sources, and not disclose any protion thereof to any other person including the parties to this action; and

IT IS FURTHER ORDERED that upon conclusion of said appeal, the Clerk of the Court of Appeals shall deliver the said sealed portion of the transcript to the Clerk of this Court to be stored in the safe of said Court.

Dated: New York, New York
June 26, 1975

S/ Lloyd F. MacMahon
U.S.D.J.

Copy Received 9/8/75
Davis J. Stolzar
atty for Appellee